



PROFESSIONAL SERVICES AGREEMENT
FOR THE OPERATION
OF THE ESCONDIDO PUBLIC LIBRARY

This Agreement ("Agreement") is entered into this 25 day of October, 2017 ("Effective Date"), by and between the CITY OF ESCONDIDO ("CITY"), a California municipal corporation, and LIBRARY SYSTEMS AND SERVICES, LLC. ("LS&S"), a Maryland limited liability company.

I.

RECITALS

- 1. It has been determined to be in the CITY's best interest to enter into this Agreement with LS&S to provide special services for the operation of the Escondido Public Library ("Library"); and
2. LS&S is considered competent to perform the necessary professional Library services as described herein for CITY.

II.

AGREEMENT

NOW, THEREFORE, it is mutually agreed by and between CITY and LS&S as follows:

- 1. Scope of Services.
A. LS&S will furnish and perform all of the services ("Services") and provide the supplies or goods as described in Attachment A which is incorporated by this reference as though set forth here in full.
B. While performing the services provided for in this Agreement, LS&S will use appropriate and generally accepted professional standards of practice existing at the time of the performance utilized by persons engaged in providing similar services. CITY will continuously monitor LS&S's services. CITY agrees to notify LS&S of any deficiencies in satisfying the requirements of this Agreement and LS&S will have (30) days after such notification to cure any shortcomings to CITY's reasonable satisfaction. All costs associated with curing the deficiencies shall be borne solely by LS&S.
C. LS&S will be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other services furnished by LS&S under this Agreement, except that LS&S will not be responsible for the accuracy of information supplied by the CITY.

2. Compensation.

- A. The CITY will pay LS&S in accordance with the conditions specified in Attachment A hereto.
- B. The compensation paid under this Agreement by CITY shall be for LS&S's overall performance of all services performed on behalf of CITY and not compensation for the specific individuals employed at CITY's facilities that are solely and exclusively in the employ of and work for LS&S.
- C. LS&S will be compensated for performance of tasks specified in Attachment A only. If LS&S believes work not within the Scope of Services ("Additional Work") is needed to complete the Scope of Services, LS&S shall notify the CITY in a writing that contains a specific description of the proposed Additional Work, reasons for the Additional Work and why it could not have been anticipated at the time this Agreement was entered into, and a detailed cost proposal for completion of the Additional Work. No compensation will be provided for any Additional Work without specific prior written consent from the CITY.
- D. Any breach of this Agreement will relieve CITY from the obligation to pay LS&S for the disputed services, if LS&S has not corrected the breach or deficiency after CITY provides notice and a reasonable time to correct it as provided for in this Agreement.

3. Term.

- A. The initial term of this Agreement will be from October 25, 2017 (the "Effective Date") to and including [June 30], 2027.
- B. The CITY, acting through to its authorized designee(s), may extend the term of this Agreement, subject to the termination procedures as provided in Paragraph 13, on the same terms and conditions as in effect just before the then-current end of the term, for up to two (2) successive periods of five (5) years each by providing written notice to LS&S no later than one hundred eighty (180) days before the then-current end of the term.

4. Time for Performance.

- A. LS&S will not perform any work under this Agreement until all parties have executed the Agreement and CITY has provided written Notice to Proceed ("NTP") to LS&S under the Agreement. CITY and LS&S shall coordinate establishing the date for the commencement of the provision of services to be included in the NTP but such date shall be no later than 90 days from the Effective Date. Any work performed by LS&S prior to the date for the commencement of services established the NTP shall be at its own risk and without compensation.
- B. The parties to this Agreement acknowledge that current CITY employees represented by one or more bargaining units, or others, may initiate legal procedures or actions to prevent the full and/or timely implementation of this Agreement ("Third Party Actions"). Based on their current understanding of the facts, the parties believe that any such Third Party Actions would be without merit. LS&S agrees to defend, indemnify and hold harmless CITY, and its councilmembers, officers, and employees, for all claims,

liabilities and attorney's fees incurred by LS&S and CITY, arising out of or related to any Third Party Actions that arise from the acts or omissions by LS&S occurring after the Effective Date of this Agreement and the receipt of an NTP from CITY.

5. Employment of Current CITY Employees.

- A. CITY and LS&S have a shared interest in ensuring that LS&S has access to a workforce of experienced workers and CITY desires to mitigate the effects of this Agreement on current CITY employees performing special services at the Library Facility ("Current Employee").
- B. LS&S agrees to extend an offer of employment to each Current Employee in accordance with applicable labor laws. The terms and conditions of such employment are decided by LS&S, not CITY, and will be on different terms than those currently in place between CITY and Current Employees.
- C. Said Current Employees are free to accept such offer of employment or reject same. The acceptance or rejection of such offer is an individual decision of each Current Employee and they shall have no further rights or claims against CITY related to or arising out of this Agreement or the employment terms and conditions they accept or which may thereafter be offered to them during the term of the Agreement or thereafter. No co-employment relationship is intended or created by this Agreement.
- D. LS&S's obligations under this Agreement shall not be reduced or altered in any way depending on the Current Employees who accept or reject an offer of employment.

6. Changes in Scope of Services.

CITY may request changes in the Scope of Services identified in Attachment A, including the addition, revision or deletion of services, within the general scope of this Agreement. The contract sum and time for performance related to such services, if different than that included herein, shall be committed to a writing executed by LS&S and the CITY. Any additional cost or credit to the CITY shall be determined in accordance with the agreement for such change in scope of services.

7. Familiarity with Work.

- A. LS&S agrees that it has:
 - 1. Carefully investigated and considered the extent of the Scope of Services to be performed to satisfy the terms of this Agreement, including Attachment A; and
 - 2. Carefully investigated and considered the facilities, collections, equipment, data, personnel, and budgets to the extent provided by CITY to perform this Agreement; and
 - 3. Satisfied itself that it can comply with all terms of the Agreement and deliver all services described in the Scope of Services within the budgets and pricing identified in this Agreement and Attachments hereto; and

4. Satisfied itself that it has the financial resources; insurance; service experience; existing in-house personnel; staffing capacity; current workload; licenses; completion ability; private consultants; vendors; and experience in dealing with individual volunteers, volunteer organizations, community groups, non-profit and charitable organizations, established Library Boards, public agencies and their staff, to satisfy and comply with all terms and conditions of this Agreement.
 - B. LS&S agrees that should it discover any circumstances or condition(s) which may materially affect its performance of this Agreement as required by this Agreement, it will immediately inform CITY of such fact.
8. Conflict of Interest.

LS&S covenants that neither it nor any officer or principal of the firm have any interests nor shall they acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services described herein. LS&S further covenants that in the performance of this Agreement, it shall employ no person having such interest as an officer, employee, agent or subcontractor. LS&S, by and through its officers, employees and agents, agrees to familiarize itself and comply with the CITY's conflict of interest laws and regulations. LS&S further covenants and agrees that it, including its officers, employees and agents, will make no monetary contributions to any political campaign of any CITY officer, council member or employee.
9. Library Board of Trustees. The parties to this Agreement covenant and agree that the Escondido Public Library Board of Trustees shall continue to have the rights, duties and responsibilities provided for in California Education Code section 18900 *et. seq.*, and as otherwise provided for in state and local law.
10. Volunteers. The parties hereto agree that LS&S shall not engage or manage any volunteers at the CITY Library or any Library-related facility. CITY will maintain responsibility for the engagement or management of any volunteers at the CITY Library or any Library-related facility. LS&S will coordinate with such agencies or entities involved in the organization and assignment of any volunteers who chose to donate personal services at any CITY Library or Library-related facility. Any donated personal services will be outside the Scope of Services described in this Agreement. LS&S agrees that it may satisfy all obligations under this Agreement without reliance on volunteers.
11. Termination.
 - A. CITY may terminate this Agreement for material breach at any time after LS&S fails to cure any material breach identified by CITY as provided in Paragraph 1.B. of this Agreement within (60) days from CITY's written notice of default.
 - B. LS&S may terminate this Agreement at any time for material breach or CITY's failure to make payments as provided for in this Agreement when due if CITY fails to cure such material breach within thirty (30) days from CITY's written notice or fails to make payment within ten (10) days from the due date.
 - C. In the event that funds for the following CITY fiscal year are not appropriated for the Library, then this Agreement shall terminate as of June 30 of the last fiscal year for

which funds were appropriated. The CITY shall immediately notify LS&S in writing of any such non-allocation of funds.

- D. Upon receiving a termination notice from CITY in conformance with this Agreement, LS&S shall immediately cease performance under this Agreement unless otherwise provided for in the termination notice or agreed by the parties in writing. Except as otherwise provided for in the Agreement or the termination notice, any work performed by LS&S after receiving the termination notice will be performed at LS&S's own cost and CITY will not be obligated to compensate LS&S for such work.
- E. If this Agreement is terminated by either party in conformance with the provisions herein, all finished or unfinished documents, data, studies, surveys, reports, and other materials, in any form, prepared by LS&S specifically for the CITY will, at the CITY's option and upon final payment to LS&S of all amounts due under this Agreement or extensions or amendments thereto, become CITY's property. LS&S shall receive reasonable compensation for any work satisfactorily performed under this Agreement to the effective date of any termination notice.
- F. Upon any termination of this Agreement, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) delete the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession (including the Documentation).
- G. Should the Agreement be terminated by either party pursuant to this Section, CITY may obtain on its own terms services similar to those terminated.

12. Permits and Licenses.

LS&S, at its sole expense, will obtain and maintain current during the term of this Agreement, all necessary permits, licenses and certificates for itself and its employees and agents that may be required by any agency or entity having jurisdiction over the services covered by this Agreement.

13. City Property.

All physical property of any kind, including buildings, fixtures, furniture, equipment, books, collections, art, and other tangible property owned by CITY at the commencement of this term of this Agreement, and all such property acquired for the benefit of the CITY and paid for by the compensation provided herein, however described, shall at all times be CITY property and LS&S shall have no ownership interest therein.

14. Format of Electronic Data.

Any and all electronic documents or files provided to the CITY by LS&S, or any of its sub-consultants or vendors, shall use Microsoft Office Suite application software for Windows or a format pre-approved in writing by the CITY.

15. Confidential Information and Intellectual Property.

- A. Confidential Information. In the performance of this Agreement, LS&S may be exposed to information regarding the identity of the CITY's patrons, CITY may be exposed to information regarding LS&S's proprietary library management techniques, and either Party may be exposed to other written or oral information, disclosed by either Party to the other, related to either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential (collectively, "Confidential Information"). Each Party shall: (1) use the same care to protect the other Party's Confidential Information from disclosure that such Party uses to protect its own information of like importance; (2) limit duplication of Confidential Information to the extent needed to perform this Agreement; and (3) disclose Confidential Information only to employees having a need to know in connection with performance of this Agreement, and who are informed of the contents of this provision prior to disclosure. This provision shall survive termination or expiration of this Agreement; and, on such termination or expiration, each Party shall return all Confidential Information, including all copies, to the owner of such information and, if requested, shall certify in writing that all such information has been returned. Because the damage resulting from a breach of this provision would be difficult or impossible to quantify and remedy at law, in case of such breach, or the threat of such breach, the Party whose Confidential Information is threatened to be disclosed shall be entitled to injunctive or other equitable relief.
- B. Exceptions. Notwithstanding the foregoing, the provisions of Section 15(A) above, shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (1) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (2) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.
- C. Intellectual Property. Subject to the terms and conditions of this Agreement, LS&S hereby grants to CITY a limited, non-exclusive, non-transferable, non-sublicensable right and license to use the Documentation (defined below), as provided by LS&S, during the term of this Agreement, solely for CITY's internal business purposes. CITY shall not use the Documentation for any purposes beyond the scope of the license granted in this Agreement. Without limiting the generality of the foregoing, CITY shall not (i) market or distribute the Documentation; (ii) make any copies of the Documentation; (iii) assign, sublicense, sell, lease, or otherwise transfer or convey, or pledge as security or otherwise encumber, CITY's rights under the license granted in this Section 15(c); or (iv) modify the Documentation, except with prior written consent of LS&S. The Parties acknowledge and agree that if CITY modifies or improves the Documentation, all such modifications or improvements shall be considered part of the

Documentation, and shall be owned by LS&S, and CITY hereby assigns to LS&S all right and title to such modifications or improvements. Other than as set forth in this paragraph, nothing in this Agreement confers any license or right to use any trademark, service mark, copyright or other intellectual property right, whether now owned or hereafter developed, of either Party. For the purposes of this Agreement, "Documentation" means the standard user manuals, instructions and related documentation made available by LS&S to CITY.

16. Insurance.

- A. Before commencing performance under this Agreement, and at all other times this Agreement is effective, LS&S shall secure and maintain at its own cost, for all operations, the following insurance coverage, unless reduced by written agreement signed by both parties:

<u>Type of Insurance</u>	<u>Limits</u>
Commercial General Liability	\$1,000,000
Business Automobile Liability	\$1,000,000
Workers Compensation	Per Statute
Errors & Omissions	\$1,000,000

- B. Commercial general liability insurance will meet or exceed the requirements of ISO Form No. CG 00 01. The amount of insurance set forth herein will be a combined single limit per occurrence including products and completed operations, property damage, bodily injury and personal and advertising injury, with limits no less than \$1,000,000 per occurrence, and with at least \$2,000,000 aggregate coverage. Liability policies will be endorsed to name CITY, and its officials and employees, as "additional insureds" under said insurance coverage. Such endorsement must be at least as broad as, or reflected on, ISO Form No. CG 20 10 11 85 or equivalent, or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later editions are used. Such insurance will be on an "occurrence," and not a "claims made," basis and will not be cancelable or subject to reduction except with agreement of CITY and upon thirty (30) days' prior written notice to CITY.
- C. Insurance coverage must be provided by an A.M. Best's A- rated, class VII carrier or better, admitted in California, or if non-admitted, a company that is on the Department of Insurance List of Approved Surplus Lines Insurers. All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- D. It is the parties' understanding that the use of a motor vehicle is not a primary subject of this Agreement. LS&S acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of the LS&S.
- E. LS&S agrees to furnish to CITY, within fourteen (14) days of the execution of this Agreement and before the date of the NTP, duly authenticated Certificates of Insurance evidencing maintenance of the insurance required by this Agreement and

such other evidence of insurance or copies of policies as may reasonably be requested by CITY.

- F. If for any reason LS&S fails to obtain or maintain the insurance required by this Agreement, CITY may terminate this Agreement in accordance with Section 11A.
- G. LS&S hereby grants to CITY a waiver of any right to subrogation which any insurer of said LS&S may acquire against the CITY by virtue of the payment of any loss under such insurance. LS&S agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

17. Warranties; Disclaimers.

- A. The CITY represents and warrants that it has all requisite power and authority to execute and deliver this Agreement and to carry out the provisions of this Agreement. All approvals on the part of the CITY necessary for the CITY's authorization of this Agreement and the performance of all obligations of the CITY hereunder have been taken. This Agreement, when executed and delivered, will be valid and binding obligations of the CITY enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) general principles of equity that restrict the availability of equitable remedies, and (c) as required by court order. Notwithstanding the foregoing, the parties agree that the obligations specified in Section 19 shall survive termination, expiration, or rescission of this Agreement. No governmental orders, permissions, consents, approvals or authorizations are required to be obtained by the CITY in connection with the CITY's execution and delivery of this Agreement or the CITY's obligations hereunder. The CITY will not violate any applicable statute, rule, regulation, order or restriction of any domestic or foreign government or any instrumentality or agency thereof in connection with the CITY's performance of all obligations of the CITY hereunder.
- B. LS&S has all requisite power and authority to execute and deliver this Agreement and to carry out the provisions of this Agreement. All approvals on the part of LS&S necessary for LS&S' authorization of this Agreement and the performance of all obligations of LS&S hereunder has been taken. This Agreement, when executed and delivered, will be valid and binding obligations of LS&S enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) general principles of equity that restrict the availability of equitable remedies, and (c) as required by court order. Notwithstanding the foregoing, the parties agree that the obligations specified in Section 19 shall survive termination, expiration, or rescission of this Agreement. No governmental orders, permissions, consents, approvals or authorizations are required to be obtained by LS&S in connection with LS&S' execution and delivery of this Agreement or LS&S' obligations hereunder. LS&S will not violate any applicable statute, rule, regulation, order or restriction of any domestic or foreign government or any instrumentality or agency thereof in connection with the LS&S' performance of all obligations of LS&S hereunder.
- C. LS&S warrants that it will perform hereunder with at least the care, diligence, and expertise generally accepted in the library service industry. Other than as set forth

expressly herein, there are no other warranties, express or implied, including warranties of merchantability or fitness for a particular purpose.

18. Limitation of Liability. Exclusive of any breaches of Section 15, in no event shall either party be liable to the other party for any incidental, special, consequential or punitive damages, regarding of the nature of the claim, including, without limitation, lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation or liabilities to third parties arising from any source, even if such party has been advised of the possibility of such damages. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have proved ineffective. Exclusive of obligations related to Section 19B, the cumulative liability of each party to the other party, for all claims arising from or related to this Agreement, including, without limitation, any cause of action sounding in contract, tort, or strict liability, shall not exceed the lesser of (1) the actual damages suffered by the aggrieved party, or (2) five hundred thousand dollars (\$500,000).
19. Indemnification.
 - A. To the fullest extent permitted by law, LS&S shall hold harmless, defend (with counsel reasonably acceptable to CITY), and indemnify CITY, including all of its officers, council members, employees, agents, insurers, and consultants, past and present (hereinafter collectively referred to as "CITY Indemnitees"), from any claim, demand, judgment, damage, liability, loss, cost or expense, including attorney's fees, for any damage arising out of: (i) failure to comply with any applicable laws as identified herein, or (ii) a breach of a representation or warranty of LS&S, except such damage as is caused by the gross negligence or willful misconduct of the CITY Indemnitees. CITY shall give prompt notice to LS&S of any matter asserted by CITY to be covered by this provision.
 - B. To the fullest extent permitted by law, CITY shall hold harmless, defend (with counsel reasonably acceptable to LS&S), and indemnify LS&S, including all of its officers, employees, agents, insurers, and consultants, past and present (hereinafter collectively referred to as "LS&S Indemnitees"), from any claim, demand, judgment, damage, liability, loss, cost or expense, including attorney's fees, for any damage arising out of or in connection with any personal injury, property damage or failure to comply with any laws as identified herein, resulting from a breach of CITY's performance obligations of this Agreement by CITY or a breach of a representation or warranty of CITY, except such damage as is caused by the gross negligence or willful misconduct of the LS&S Indemnitees. LS&S shall give prompt notice to CITY of any matter asserted by LS&S to be covered by this provision.
 - C. CITY does not and shall not waive any rights that it may have against LS&S by reason of this Indemnification provision because of the acceptance by CITY, or deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless, defense and indemnification provision shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, judgment, damage, liability, loss, cost or expense, including attorney's fees as identified herein.
20. Waiver. Neither LS&S' nor CITY's review or acceptance of, or payment for, services or work product completed by either party under the Agreement shall be construed to operate

as a waiver of any rights the other party may have under the Agreement or of any cause of action arising from either party's performance. A waiver by either party of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement.

21. Anti-Assignment Clause. Neither party may assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the other party, and any attempt to do so will immediately render this entire Agreement null and void; except that LS&S may subcontract or delegate portions of the Services with CITY's approval, which approval shall not be unreasonably withheld; provided, however, that in no case shall CITY be liable to any party other than LS&S, or for any amount in excess of the price specified on Attachment A, plus any additional charges permitted hereunder. LS&S shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
22. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
23. Independent Contractor.
 - A. LS&S is an independent contractor and no agency or employment relationship of any kind, either express or implied, is created by the execution of this Agreement.
 - B. The provision of library services to government entities is an integral part of the regular business operations of LS&S. LS&S will have exclusive control over all work performed by its employees and the manner in which it is performed. LS&S employees performing services related to this Agreement will be interviewed, screened, hired, trained, managed, evaluated, transferred, promoted, demoted, disciplined and terminated by LS&S. LS&S shall have exclusive control over the determination of the skills required for specific workers and tasks; the source of the instrumentalities and tools used by its employees, subcontractors, consultants, and vendors, if any; the duration of the employment relationship between LS&S and its employees; its employees' salaries and benefits, including increases or reductions thereto; employee work schedules, duty assignments, location of employment; the selection of managers; and timesheet approval. LS&S shall have the exclusive right to assign additional projects to its employees, to determine hours worked, and to determine whether its employees may hire and pay assistants. LS&S employee salary and benefits structure and amounts shall be determined independent of the compensation received from CITY under this Agreement.
 - C. LS&S shall be exclusively responsible for paying appropriate employer taxes, social security and government insurance payments in accordance with state and federal law.
 - D. LS&S is permitted to contract for similar services to other entities, local governments or employers while this Agreement is in effect.

- E. LS&S and its employees are not entitled to participate in any CITY pension or retirement plan, insurance program, bonus payouts, or similar benefits CITY regularly provides to CITY employees.
 - F. Any provision of this Agreement, or services performed by LS&S during the term of this Agreement, which may appear to give the CITY the right to direct LS&S as to the details of doing the work or to exercise a measure of control over the work, shall only constitute general guidance and direction as to end results consistent with the terms and spirit of this Agreement.
 - G. Because the parties expressly believe and agree that LS&S employees working at any CITY facility are not CITY employees, common law or otherwise, and have no claims to any California Public Employee Retirement System ("CalPERS") benefits beyond those that are vested and known at the time this Agreement becomes effective, should CalPERS or any administrative or judicial body of competent jurisdiction make any finding that such employees are entitled to CalPERS compensation or benefits not anticipated by the parties at the time this Agreement becomes effective, this Agreement may be terminated by CITY or LS&S by providing the other party with 30 days written notice.
 - H. The parties expressly believe and agree that any Current Employee who accepts an offer of employment with LS&S, and thereby becomes an LS&S employee, is not upon acceptance of such employment represented by a union or collective bargaining unit and does not have any rights under state or federal law to representation in collective bargaining for compensation, benefits or workplace conditions. If any adjudicative or administrative body of competent jurisdiction determines otherwise, LS&S shall be solely and exclusively responsible for meeting its legal obligations to bargain and the results of any such bargaining with its employees and/or their representatives.
24. Non-solicitation. CITY acknowledges and agrees that the employees and consultants of LS&S who perform the Services are a valuable asset to LS&S and are difficult to replace. Accordingly, CITY agrees that, during the Term of the Agreement, and for a period of one (1) year after the termination or expiration of this Agreement, it shall not solicit (whether as an employee, independent contractor or consultant) any LS&S employee or consultant who performs any of the Services. Notwithstanding the foregoing, this restriction shall not apply to any individual employed by the other who voluntarily seeks employment in response to general employment advertisements in the public commercial media.
25. Right to Audit. LS&S shall maintain complete and accurate records with respect to all services and matters covered by this Agreement. CITY will have access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings and activities.
26. Modification of Agreement. This Agreement and each of terms may only be amended and/or modified by a writing signed by each party through their designated and authorized representative.
27. Merger Clause. This Agreement, including its Attachments, is the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling the agreement of the parties for the subject matter described herein.

28. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity or enforceability of any other provisions of this Agreement.
29. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
30. Interpretation of Agreement. The parties agree that this Agreement and each of its terms was negotiated at arms-length and each party has had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement, and each of its terms and Attachments, will be construed as a whole in accordance with its fair and reasonable meanings and will not be interpreted against either party.
31. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
32. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below.

If to LS&S:

Library Systems & Services, LLC
2600 Tower Oaks Blvd., Suite 510
Rockville, MD 20852
Attn: President

If to CITY:

City of Escondido
201 N. Broadway
Escondido, CA 92025
Attn: City Manager

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States mail, postage prepaid and properly addressed as noted above. In all other instances, notice will be deemed given at the time of actual delivery. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.

33. Business License. LS&S is required to obtain a City of Escondido Business License prior to execution of this Agreement.
34. Third-Party Beneficiaries. Except as specifically provided in Attachment A, this Agreement and every provision herein is for the exclusive benefit of CITY and LS&S and not for the benefit of any other person, entity or party.

35. Compliance with Applicable Laws, Permits and Licenses. LS&S shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. LS&S shall obtain any and all licenses, permits, and authorizations necessary to perform services set forth in this Agreement. CITY, nor any elected or appointed boards, officers, officials, employees, or agents shall be liable, at law or in equity, as a result of any failure of LS&S to comply with this section.
36. Force Majeure. Should performance of this Agreement be prevented due to fire, flood, explosion, acts of terrorism, war, non-CITY government action, civil or military authority, the natural elements, or other similar causes beyond the parties' reasonable control, the Agreement will immediately terminate without obligation of either party to the other.
37. Immigration Reform and Control Act of 1986. LS&S shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. LS&S affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. LS&S agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.
38. Captions. The captions of the paragraphs in this Agreement and Attachments thereto are for convenience of reference only and are not intended to be material to the obligations of the parties and shall not affect the interpretation of the Agreement.
39. Authority to Enter into Agreement. The parties represent and warrant that all necessary action has been taken by the parties to authorize the undersigned to execute the Agreement and to undertake the respective duties assumed by each party herein.
40. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the parties under law.

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IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

For CITY:

Date: 10-25-17

Sam Abed
Sam Abed
Mayor

Date: 10-25-17

Diane Halverson
Diane Halverson
City Clerk

For LS&S:

Date: 10-22-17

By: Todd Frager
Todd Frager, Chief Financial Officer

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: [Signature]



Sarah Brittle
10-22-17

EAST\146259585.15

Acknowledgment in a Representative Capacity

This certificate is attached to a Professional Services Agreement,

dated 10/23/17.

Document Information: A-3232 PSA - Operation of the Escondido Public Library contract

STATE OF MARYLAND County OF Montgomery

On this 23 day of October, 2017 before me, the undersigned officer, personally appeared Library Systems & Services, a corporation and that he/she/they, as such Todd Frager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself/themselves as Chief Financial Officer.

In witness hereof I hereunto set my hand and official seal.

Sarah Brittle

Signature of Notary Public

Sarah Brittle

Print name

10-14-20

My commission expires



Attachment A

**City of Escondido Public Library
Contract for Library Management and Operations**

A. Scope of Services.

Library Systems & Services, LLC. ("LS&S") will administer the operations of the City of Escondido's ("City") Public Library facilities (collectively "Library"), including the accounting for, purchase of, and payment for payroll services and goods; services from vendors for budgeted supplies; other direct operating expenditures; Library Materials (as defined herein); and Capital Items (as defined below) sufficient to operate the Library in accordance with the policies and guidelines approved by the City and Escondido Public Library Board of Trustees ("Library Board") and as provided for herein.

LS&S shall provide, by and through its own employees or independent contractors ("LS&S Staff" or "Library Staff"), any labor LS&S deems necessary for the operation of the Library as required to perform under this Agreement. All costs of the LS&S Staff shall be paid by LS&S and are included in the Operating Budget (as defined below).

LS&S shall have the sole and absolute right for setting Library Staff compensation and benefits. City Employees currently working at the Library ("Current Employees") may apply and interview for positions with LS&S. City and LS&S agree that the hiring of Current Employees would be in the parties' best interests in order to retain existing institutional knowledge and expertise, and aid in the swift and smooth transition of operational management for both Current Employees and the general public. LS&S shall have the sole right to hire, manage, evaluate and/or terminate the employment of the Library Staff from time to time to perform work under this Agreement.

LS&S will provide the appropriate staffing levels to keep the Library open to the public at least for sixty (60) hours per week. The Library will follow the published City Holiday Schedule plus any other holidays agreed upon writing by the City and LS&S. The Library will close at 5:00 pm in alignment with City Hall on the following holidays if the Library is normally scheduled to remain open until 7:00 pm or later: Thanksgiving Eve, Christmas Eve, and New Year's Eve. In addition, the Library will be closed one mutually agreed upon day each year for staff development day and/or staff training.

The hours of operation of the Library will be as follows, unless otherwise provided herein or agreed to by the parties:

Monday - Friday.	9:30 a.m. - 7 p.m. (47.5 hours)
Saturday	9:30 a.m. - 6 p.m. (8.5 hours)
Sunday	1 p.m. - 5 p.m. (4 hours)

Hours of operation of the Library for the Pioneer Room will be as follows:

Tuesday	2:00 pm - 7 pm
Wednesday	1:00 pm – 3 pm (By Appointment from 3:00 pm – 6 pm)
Thursday	1:00 pm – 3 pm (By Appointment from 3:00 pm – 6pm)

LS&S will develop and implement a written Strategic Plan ("Strategic Plan") for the Library, in cooperation with the City, elected and appointed local officials, including the Library Board, community stakeholders, and the Library Staff. Using current professional standards and practice, the Strategic Plan will include, but not be limited to, a service needs assessment of Escondido residents (sampling all demographic and geographic segments of the community), a five (5) year forecast of Library maintenance and growth, Library expansion plan and/or potential Bond Measure for construction of a new library facility, Library programming enhancements and/or additions to be phased in as recommended, and a comprehensive identification of recommended technology and library material needs. Also included within the Strategic Plan should be staffing resource requirements and budgetary analysis for each item addressed in the plan. The plan shall identify challenges and opportunities for the Library Staff and corresponding strategic responses, including specific, measurable goals and objectives. The Strategic Plan will be developed at least 180 days after the date of commencement of Agreement services provided in the Notice to Proceed and will be updated each year this Agreement is in effect within 30 days prior to the expiration of any current Strategic Plan.

This Strategic Plan, when approved by the City and Library Board, will help govern the direction and focus of the fulfillment of the mission of providing effective and efficient Library service to meet the personal, professional, and lifelong learning needs of the citizens served by the Library.

B. List of Services LS&S Agrees to Perform.

1. General:

- a. Administer all aspects of the day-to-day operations of the Library, in accordance with generally accepted practices and principles of the public library profession.
- b. Periodically review program development, collections, and community development involvement activities, ensuring that programming, services, and collections are in line with community needs and input.
- c. Comply with all California laws and regulations pertaining to public library services, including, but not limited to, the California Municipal Libraries Act and California Library Services Act.
- d. Represent the City of Escondido at relevant library meetings, including but not limited to the annual California Library Association State Librarians' Meeting and meetings of the Serra Library Cooperative including the Director's Meeting, Youth Services Committee Meeting, and STARC Committee Meeting.

2. Community Relations:

- a. Develop and maintain effective working relationships with City staff, elected City officials, the Library Board, other advisory boards if any, other appointed officials, and community groups such as the Friends of the Library and Escondido Library Foundation. A representative from LS&S shall be present at all Library Board, Friends of the Library and Escondido Library Foundation meetings and should be present at City Council meetings on a routine basis and as requested.
- b. Utilize and potentially expand upon the existing marketing plan to promote all Library services to the residents of the City; effectively disseminate information; and promote use of the Library, resources, and services.
- c. Work cooperatively with Library support groups to coordinate Library-marketing efforts.
- d. Prepare, coordinate and disseminate relevant website and social media news releases following established standards and guidelines for professional appearance.

3. Fiscal Responsibility:

- a. Be responsible for the proper administration of the overall Library budget, of which the contracted services are a part. The City will provide the detailed annual budget for the current fiscal year that corresponds to the approved FY17-18 budget attached as Schedule A. This will serve as the "Base Budget." In future years an annual expenditure budget will be provided to LS&S by the City which covers Automation Maintenance, Software and Licensing costs as well as Collection Procurement identified to take place during each Fiscal Year during the Term of this Agreement. Increased spending beyond the Base Budget will be the responsibility of the City to fund and billed in addition to the amounts specified in Section E.1. LS&S is authorized to spend funds for the purpose of fulfilling this contract. City staff will provide LS&S with the approved budget on or before July first (1st) of each year. If for any reason, LS&S expends money outside the scope of this agreement without prior written approval and authorization or expends funds which exceed the Operating Budget as Specified in Section E.1, LS&S is responsible for those expenditures as incurred. LS&S will bill the City for variable costs breaking out each category on the invoices with detailed expenditure descriptions and supporting documentation of each item.
- b. Be the City's principal liaison with the California State Library with respect to library statistical reporting and funding matters.
- c. Collect and account for fines and fees, and remit same to the City. All revenues resulting from Library operations and programs, including rents charged if any, shall belong to the City.
- d. Follow the City's prescribed financial reporting procedures related to but not limited to the following:

- Follow and provide any necessary documents pertaining to delinquent library

- patron accounts to the City
 - Collection and deposit of room rental fees
 - Collection and deposit of printer and copier fees
 - Collection and deposit of fines, fees, and donations
- e. All Library Staff responsible for handling cash receipts shall be trained in and adhere to City cash handling procedures.
- f. At the request of the City Manager and/or Library Board, provide monthly and annual financial statements to the requesting party or his/her designee that provides an overview of the costs associated with operation of the Library. An agreed upon form for such information will be designed and agreed upon prior to the first submission.
- g. Review all aspects of Library operation and service for efficiency and cost effectiveness, while making recommendations for changes as appropriate.
- h. At the request of the City Manager and/or Library Board, prepare annual financial statements for expenditures relating to the operation of the Library. Retain necessary and relevant financial files, and submit to financial audit of all agreement-related records upon request of the City or Library Board, said audit to be at City's expense.
- i. Explore supplemental Library funding opportunities, and apply for those which meet the Library's objectives including, but not limited to, application and administration services for CENIC Broadband Internet Grant and or Federal E-Rate funding. Any costs associated with implementing these opportunities will be the responsibility of the City.
- j. Continue to seek innovative means of adding value to the City at little or no additional cost, including the research of, and application for, grants. Grants must be submitted to the City's Grant Committee and the Library Board prior to application.
- k. Make recommendations to the City on fine and fee schedules, and investigate and recommend supplemental revenue sources.

4. Management and Reporting:

- a. Prepare and provide quarterly reports to the City and/or Library Board, describing Library activities and recommending changes in policies, procedures, and operations as necessary and appropriate.
- b. Prepare and provide monthly statistical and financial reports in a form acceptable to the City and Library Board on Library activities. Prepare and provide a comprehensive report relating to Library services annually. These reports will be received by the City Manager or his/her designee and the Library Board and evaluated for compliance with the terms of the Agreement.
- c. At least annually, survey and gather information from residents (not just Library users) for use in Library planning and customer satisfaction. The form and type of survey to

be mutually agreed upon by City, the Library Board and LS&S. Share the results of this annual survey with the City Manager or his/her designee, the Library Board and the community through a public forum to be mutually agreed upon by City, the Library Board and LS&S.

- d. LS&S shall identify a City Librarian who shall communicate with the City Manager or his/her designee and the Library Board on all matters relating to the Library. City Librarian will also serve as Library staff liaison to the Library Board, Friends of the Library, the Escondido Library Foundation and/or other Library support groups.
- e. All documents pertaining to City's library operations shall be retained in the City's name in accordance with the City's Records Retention Policy. The Pioneer Room staff shall retain responsibility for interfacing with the City Clerk's office for the transfer of records appropriate for the Pioneer Room Collection.
- f. LS&S shall be responsible for ensuring that its participation in all notices, agendas, Library Board meetings and related minutes of such meetings related to the Library and governed by the Ralph M. Brown Act (Government Code sections 54950 *et. seq.*) will conform to California law.

5. Staff Development and Coaching:

- a. Provide orientation, training, and professional development of all Library Staff including, but not limited to, a staff development day each year.
- b. Provide leadership and guidance to maximize Library Staff effectiveness in Library operations.
- c. LS&S will provide harassment, discrimination, and retaliation training to all supervisory employees at a minimum of every two years or as otherwise required by law, with the initial training to take place within ninety (90) days of the effective date of this Agreement for current supervising employees, and within ninety (90) days of new assignments for future incoming supervisory employees.

6. Public Services:

- a. Provide prompt, friendly, and accurate assistance in the use of all Library services.
- b. Provide prompt and accurate circulation, information, and reference services.
- c. Provide requested material promptly.
- d. Mirror and emulate the Escondido Public Library's Mission, Vision and Values Statements.
- e. Mirror and emulate a dress code policy for Library Staff similar to that of the City.
- f. Comply with established City processes and protocols for Library volunteers, including

required background checks. The City will determine the annual budget for background checks. LS&S will bill the costs of background checks for any volunteers that are not screened by the City directly.

- g. Comply with all federal, state and local laws of any kind.
- h. Maintain and pay the annual membership fees for the following, if included in the Base Budget: Serra Library Cooperative System (Serra) to provide delivery services and cooperative purchasing agreements; Califa Purchasing Consortium Membership; California Library Association Institutional Membership; Southern California Library Literacy Network Membership; and Innovative Users Group Membership (for at least the duration of the existing ILS Agreement).

7. Circulating and Reference Materials:

- a. In conjunction with adhering to the Collection Development Policy approved by the Library Board, establish a Collection Development Plan ("Collection Plan") which identifies a comprehensive set of procedures to guide the retention of existing materials and selection of new materials to be consistent with local community needs and best library practices. This Collection Plan should outline a schedule for regular, ongoing weeding of the collection, how analytics will be used to determine budget allocations, timeline and turnaround time for receiving and responding to review lists from the Centralized Support Unit ("CSU"), and the staff competencies required for those performing collection development duties.
- b. Review the Collection Plan on a regular basis to ensure it continues to reflect community needs. Written recommendations for any Collection Plan updates will be made with deference to local input with final decisions on any updates reasonably made by the City and/or Library Board.
- c. Provide in-depth collection development and management including a comprehensive analysis of the age; usage; relationship of print, non-print, and electronic resources; and imbalances in various areas utilizing evidenced based selection tools to allocate the materials budget. The collection should maintain a balanced representation of classic literature, foreign language materials, high-interest popular titles, and educational resources representing multiple, opposing viewpoints and diverse perspectives on each topic even if usage of certain titles is low. Patron-driving acquisitions, either through the established Purchase Suggestion process or through a mutually agreed-upon alternative method must be employed.
- d. Provide ongoing and systematic evaluation and refresh of existing materials, and recommend longer term collection growth in relation to the City's financial resources.
- e. Follow the established policy and procedures for Reconsideration of Library Materials approved by the Library Board.

8. Inter-Library Loan Program:

- a. To the extent this cost previously exists in the base budget; Maintain membership in OCLC (Online Computer Library Center) in order to provide a high quality and appropriate inter-

library loan program.

9. Programming:

- a. Provide high-quality, effective educational, recreational, and cultural programs of interest to all age groups present in the community.
- b. All programs currently in place will continue and be analyzed with recommendations provided for the long-range plan documents (Strategic Plan) and information on new program additions will be provided, in writing, to the City Manager or his/her designee and the Library Board. The Library Board has the right to discontinue any of the current programs. The City Manager or his/her designee has the right to discontinue any of the current programs if funding is unavailable. To the extent the Library Board or City Manager choose to continue the current programs during the Agreement term, LS&S agrees to provide the following programming/events and pay all program/event related expenses identified in the Base Budget or otherwise provided by volunteers or through other community support and funding, if any.
 - Weekly baby, toddler, and pre-school story times including bilingual instruction.
 - Monthly book clubs for children, teens, and adults including a bilingual adult book club.
 - Monthly teen programs that provide opportunities for earning community service credit, developing leadership skills, and contributing to the direction of teen-related programming.
 - Minimum monthly Science, Technology, Engineering, Arts, and Mathematics (STEAM) programming for children, teens, and adults.
 - Minimum 7-week Summer Reading Challenge for adults, teens, children, and babies including weekly events.
 - Monthly special programs for all ages that celebrate local, regional, and national holidays and festivities; ALA (American Library Association)-sponsored campaigns; genealogy; Escondido's local history (Pioneer Room); educational seminars related to health, finances, technology; programs addressing trending topics such as coding, adult crafting, virtual reality, and 3-D printing; author events; writers' groups.
 - Monthly concert
 - Annual Food for Fines program where patrons can donate canned goods to eliminate up to \$20 in overdue fines and/or fees from their accounts
 - To the extent these programs exist at the execution of this agreement, continue existing content creation programs, Library YOU and Pop Up Podcast.
 - Read Local, Shop Local partnership with local businesses to provide discounts to Library cardholders.
 - Continue the partnership with San Diego Children's Discovery Museum to provide free, circulating passes for museum admission. To the extent partners are willing to participate, expand upon this program to include additional museums and institutions including but not limited to the California Center for the Arts, Escondido; Roynon Museum of Earth Sciences & Paleontology; San Diego Archaeological Center, and the Safari Park.
- c. Conduct regular outreach efforts including visits to school classrooms, attend back-to-school nights, and present at meetings of community groups, school media tech meetings, service clubs, and other local organizations, in addition to hosting tours of the Library, to promote the services, resources, and value of the Library. Partner with

City departments to participate in City-sponsored community events such as but not limited to – Cruisin’ Grand, Educator’s Night Out, Neighborhood Services events, Farmer’s Market, National Night Out Against Crime, etc.

- d. Ensure that all non-City program providers are properly permitted and insured and appropriate waivers have been executed by all participants in conformance with established City policy.

10. Facilities and Equipment:

- a. Work with Library Board, Library Staff and City officials to ensure effective building maintenance by promptly identifying and reporting problems with the facility.
- b. Provide daily janitorial services in Library facilities.

11. Systems:

- a. IT support is provided through shared services and is the responsibility of the City. LS&S will be responsible for supporting the City IT Department and the City Library’s Integrated Library System (“ILS”) required to effectively operate the Library. The pricing schedule provided for in this Agreement includes an adequate number of ILS seat licenses to effectively operate the Library. If any new branch libraries or outlets are added in the future, the costs for the additional ILS seat licenses required to support those locations are not included in the pricing schedule. Additional licenses will be the responsibility of the City. Established procedures shall be followed and expanded upon for regular maintenance of the ILS, including but not limited to software upgrades recommended by the vendor, regular weeding of inactive accounts based on 5 years on inactivity, removal of inactive email addresses, and regular clean-up of bibliographic records.
- b. Be responsible for supporting the City’s IT acquisition and maintenance of any servers/hardware required for the ILS.
- c. Be responsible for coordinating with the City IT on any contingency plans or alternative solutions for planned or unplanned circumstances when the ILS is unavailable.
- d. Be responsible for reporting system outages and problems proactively via the use of the vendor’s Support Portal and the City’s IT Helpdesk system.
- e. Advise the Library Board and City as to recommendations in the area of automation that would enhance service and/or decrease overall operating costs. Technology professionals from LS&S will meet with technology professionals from the City on a semi-annual basis to discuss new technologies and opportunities to streamline library operations.
- f. Any equipment purchased by and belonging to LS&S and used for Library purposes must be asset tagged. It is the responsibility of LS&S to label any of its equipment accordingly. Any unlabeled equipment shall remain with the City

- g. The use of City-supplied computer equipment and software as well as internet and e-mail use requires the appropriate, efficient, ethical, and legal utilization of City computer hardware and network resources. The use of computer hardware and network resources must support the City's and the Library Board's objectives and be consistent with their missions. Users must abide by the City's and Library Board's policies, administrative directives, procedures, rules, regulations, and guidelines. If a user violates any such provisions, his/her access to the computer network and the use of computer equipment may be denied. The City reserves the right to disallow any LS&S employee who violates any of the City provisions to provide Library services under this Agreement.
- h. LS&S understands and agrees to provide written acknowledgement from each employee providing Library services for the City that the employee has read and agrees to comply with City and Library Board's adopted procedures concerning the appropriate use of City computer and acceptable internet and email use on City's computers.
- i. LS&S will maintain participation in the CENIC Broadband Internet Project with the provision of a minimum 1 gbps fiber internet speed. Costs associated with the maintenance and upgrade of required corresponding hardware and software are included in the Operating Budget.
- j. LS&S will maintain participation in the FCC's Schools and Libraries Program, known as the e-Rate Program, for discounted internet access. In the absence of an existing third-party vendor to provide this internet service, LS&S will engage a third-party vendor and the costs of this vendor will be applied against the fees received.
- k. City IT will maintain Child Internet Protection Act (CIPA) compliance or similar federal and state laws by filtering internet access for users under the age of 18.
- l. City IT will maintain software licenses that provide for the protection of privacy of patrons utilizing public internet computers and ensure that any data downloaded to local hardware will be deleted between users.
- m. All technology software and maintenance costs for the automation system and Library specific software programs will be paid by LS&S as invoiced by vendors at a not-to-exceed amount identified within the City's Library Budget and agreed upon by LS&S as part of the annual budgeting process. LS&S will subsequently include the items on the next monthly City invoice for reimbursement at actual cost incurred.

12. Planning and Performance Monitoring:

- a. Work in partnership with the City and Library Board on positioning the Library for the future by assisting all stakeholders in Space and Service Planning for the existing and potential new library facility in order to optimize and expand the Library's capacity for collections, programs and related services. LS&S will prepare, at no additional expense to City, a comprehensive Needs Assessment and will reach out and work with all local stakeholders to provide community outreach and education efforts for a public funding initiative. LS&S will establish short- and long-term goals and objectives, to be approved by the City and Library Board, reflecting a course of action that continually

improves Library service, and administrative procedures and policies that meet the changing requirements of the Library.

- b. As part of the development of the Strategic Plan, City, the Library Board, and LS&S shall work cooperatively to develop core Library performance measurements by which LS&S's performance under this Agreement can be objectively measured and compile monthly, quarterly, and annual reports to the City and Library Board regarding the same. California State Library Public Library Statistics reported by the City for FY 2016-17 will be the minimum reported benchmark measurements. LS&S will be responsible for submitting statistics to the California State Library and Institute of Museum and Library Services on an annual basis.
- c. LS&S, the Library Board and the City Manager or his/her designee shall meet annually to review and evaluate LS&S's performance during the term of this Agreement.

C. Excluded Services.

LS&S shall have no responsibility for administration, purchase or payment of, or any liability or duty to defend claims for:

1. Any Capital Items, which shall mean any capital acquisitions, improvements, or replacements of any of the properties, facilities, equipment, furniture, furnishings, fixtures, or leasehold improvements of the Library.
2. Any amount of costs for unbudgeted repairs, maintenance, and/or upkeep of Capital Items owned by the City.
3. Any patron accommodations or structural improvements regarding the Library facilities required by the Americans with Disabilities Act (ADA) or any similar federal, state, or local regulations.
4. The City will be responsible for major facility projects and upgrades concerning Library buildings, grounds, building systems, landscaping, HVAC, lighting, telecommunications, Internet access, and will be responsible for any capital improvements at Library facilities.
5. The City will be responsible for providing routine maintenance, including landscaping, phone, waste removal, recycling, pest control, fire extinguishers, and alarms in Library facilities. This includes the interior and exterior of the structure, all restrooms, electrical, building systems, and the heating and air conditioning system. LS&S will be responsible for janitorial services. LS&S shall work with Library Staff, the Library Board and City to ensure effective building maintenance by promptly identifying and reporting problems with the facilities. LS&S shall be responsible for utilities (gas, electric, water, sewer) at the base year rate of \$137,900; any increases above the base rate, plus the cumulative 3% escalation, would be the City's responsibility at the actual cost incurred.
6. City will be responsible for insuring the Library property, facilities, fixtures, and furnishing against all perils and risk of loss.
7. City is responsible for providing any security equipment for the Library and surrounding

areas as may be desired by City. City is responsible for the configuration and maintenance of the security cameras and associated equipment and network at the Library. Library Staff shall be responsible for reviewing security camera "video" in the event of an incident and contacting law enforcement authorities as appropriate.

8. The Library Board and City are responsible for setting all general policies that govern the operations of the Library and which are not inconsistent with the terms of this Agreement and the Library Board's management, including the Code of Conduct Policy, but excluding policies related to staffing for which LS&S shall be responsible.
9. The City will provide and, when necessary, replace, all necessary software, hardware and related peripherals, for use by Library Staff for Library operations only and for the service of the general public including periodic replacement of aged or obsolete equipment as outlined in Schedule B. City will provide day-to-day maintenance and servicing of said software, hardware, and related peripherals. The City will provide, maintain, and service computer networks and the telephone system/network and equipment. City will maintain valid and current licensing and maintenance on all equipment and systems.
10. City will be responsible for all copier and printer costs, costs of operations and maintenance, toner, paper and other consumables.
11. City will be responsible for any future increases in wages and salaries mandated by Federal, State or Local regulations or legislation and unknown at the execution of this agreement that exceeds 3% in any given year.
12. City will be responsible for any goods or services, including payroll, that were rendered to the City prior to the Effective Date.
13. City will be responsible for alleged unfair labor practices, grievances, or any claims or litigation whatsoever arising out of the hiring and/or firing, layoff, subcontracting, assignment, reassignment or discipline of any Library staff not employed by LS&S at the time of the relevant incident.
14. City will be responsible for any worker's compensation or other claims arising from injuries sustained prior to the Effective Date by any Library staff not employed by LS&S at the time of such injuries.
15. City will be responsible for any costs of any current or future employee benefits, including payroll taxes, retirement benefits, voluntary retirement incentives, pension contributions, employee buyouts or other similar programs adopted by City related to City employment.

D. Library Materials and Materials Handling Fee.

The responsibility for adopting Library collection development policies will remain with the City and Library Board, and all Library Materials selections, in cooperation with the City and Library Board, will be the responsibility of Library Staff employed by LS&S. If and when requested by the City or Library Board, LS&S will, on behalf and for the benefit of those parties, attempt to negotiate favorable discounts and prices from library suppliers for the purchase of all Library materials, which shall include books, periodicals, newspapers, microfilms, electronic database

subscriptions, standing orders, electronic materials (eBooks, eAudiobooks, eMagazines), audio and video materials and cases, automated reference services, binding, cataloging, and processing costs (collectively, "Library Materials").

If and when requested to purchase Library Materials by the City or Library Board, LS&S will have sole authority to select vendors, place orders with the suppliers and perform the accounting functions related to those orders, including prompt payment of the invoices, and in accounting for the cost of the Library Materials, LS&S shall include a fee of five percent (5%) of the cost of the Library Materials ordered ("Materials Handling Fee").

E. Operating Budget, Charges and Payments.

1. Operating Budget and Charges.

Period	Charges ("Operating Budget")*		Min Library Materials
	Annualized	Monthly	
January 15, 2018 to June 30, 2018	\$____	\$ 206,250.00	\$__
July 1, 2018 to June 30, 2019	\$2,545,000	\$212,083.33	\$250,000
July 1, 2019 to June 30, 2020	\$2,617,250	\$218,104.17	\$250,000
July 1, 2020 to June 30, 2021	\$2,701,818	\$225,151.46	\$250,000
July 1, 2021 to June 30, 2022	\$2,778,772	\$231,564.34	\$250,000
July 1, 2022 to June 30, 2023	\$2,858,185	\$238,182.10	\$250,000
July 1, 2023 to June 30, 2024	\$2,945,131	\$245,427.56	\$250,000
July 1, 2024 to June 30, 2025	\$3,034,685	\$252,890.39	\$250,000
July 1, 2025 to June 30, 2026	\$3,121,925	\$260,160.43	\$250,000
July 1, 2026 to June 30, 2027	\$3,216,933	\$268,077.75	\$250,000

* Library Materials are not included in the Operating Budget amounts indicated above. The City will determine the amount to be budgeted for Library Materials on an annual basis, the total amount of which will include sales tax, shipping, processing fees, and, the Materials Handling Fee. Payment by the City for Library Materials ordered and purchased by LS&S for the Library shall be made only on a reimbursement basis following submission of an invoice and documentation of expenditures.

On or before the first (1st) day of January of each calendar year that this Agreement is in effect, LS&S will provide the City and Library Board with the projected budget for the next Fiscal Year period (July 1 – June 30). The City and Library Board will review, comment, and negotiate the proposed budget with LS&S and approve the draft next Fiscal Year budget on or before May 1 pending final approval of the

overall Library Budget by City Council. If the Parties have not reached such agreement thirty (30) days before the end of such Period, then the new charge shall be equal to the Charge for the last month of such Period multiplied by twelve (12) or the number of Remaining Months, whichever is less, plus three percent (3%).

The Operating Budget is contingent on other existing contractual terms, obligations, and responsibilities remaining the same, except as expressly noted herein.

2. Payments.

LS&S shall invoice the City twice-monthly in advance on or before the 1st and 15th of each month. City shall pay LS&S on a twice-monthly basis any invoiced reimbursables, as well as a pro-rata share of the annualized "Operating Budget" amounts. Such payment shall be made by the 15th and 30th of each month.

F. Staffing.

1. LS&S will employ qualified Library Staff sufficient to provide services and programs during all hours of Library operations and the necessary orientation and ongoing training and professional development to the Library Staff.
2. City Librarian or LS&S Corporate staff shall provide City and Library Board with notice whenever staff begin or end employment with LS&S at the Library so City can collect/distribute keys and equipment as well as enable/disable computer accounts and security codes. City Librarian shall maintain a checklist that is to be completed whenever staff are hired or shall no longer work at Library.
3. All personnel employed to perform the services necessary to operate the Library and to perform the other functions of LS&S shall be employees of LS&S, which shall pay all costs related to their employment.
4. LS&S's Library Staff will consist of a **minimum** of twenty-two (22) Full Time Equivalent (FTE) positions.

The staffing allocation shall be as follows:

- One (1.0 FTE) City Librarian*
- Two (2.0 FTE) Librarians**
- Four (4.0 FTE) Professional Support Positions (including Marketing/Outreach Coordinator, Program Coordinator, City Volunteer Coordinator and Literacy Coordinator)
- Thirteen (13 FTE) Library Support Personnel
- One (1.0 FTE) Office Manager/Administrative Assistant
- One (1.0 FTE) Janitor

* Desirable Experience and Education: Master's degree in Library Science, Library and Information Science, or similar field from an ALA accredited college or university; five (5) years of progressively responsible professional library experience, including two or more years in a supervisory or lead capacity; or an equivalent combination of training and experience.

Appointment of an individual to this position shall be subject to the approval of the Library Board and City Manager or his/her designee.

**** Desirable Experience and Education:** Master's degree in Library Science, Library and Information Science, or similar field from an ALA accredited college or university; one (1) years of progressively responsible professional library experience; or an equivalent combination of training and experience.

From time to time, actual staffing levels may fluctuate due to normal turnover and attrition. LS&S agrees it will make a good faith effort to recruit and select qualified employees to fill vacancies within a reasonable period of time in order to maintain appropriate and necessary staffing levels. LS&S commits to giving a preference to qualified local residents to fill any such vacant positions to the extent permissible by law.

5. LS&S agrees to conduct background checks, to include a check for criminal and sex offender history, for all employees working within the Library facilities or for the Library in any capacity as part of its Library Staff. In addition, LS&S will comply with established City processes and protocols for Library volunteers, including any required background checks. The City will manage the annual budget and cover the costs of volunteer background checks.

G. Special Conditions.

LS&S may purchase goods for use in the administration and operation of the Library. Title to all tangible items purchased by LS&S on behalf of the City shall at all times reside in the City. If LS&S furnishes any goods to the City pursuant to this provision, LS&S will use good faith efforts to extend the manufacturer's warranty, if any, to the City. All goods, services, and materials designated within this Agreement are the responsibility of LS&S to procure. There are no other warranties, express or implied, including warranties of merchantability or fitness for particular purpose as to any such goods and items.

**Schedule A
Base Budget**

(Attached)

Schedule B
Technology Support Services

Section 1: Purpose

The purpose of this Schedule B is to set forth additional terms of the Agreement regarding the responsibilities of the City, acting through its Information Services Department and LS&S, acting through its employees assigned to operate the Library

Section 2: Definitions

The words and phrases used in this Schedule B shall have the same meaning as provided in the Agreement. In addition, the following words, phrases, and abbreviations shall have the following meanings:

“**ILS**” means Integrated Library System.

“**IS Department**” means City’s Information Services Department.

“**IS Director**” means City’s Director of Information Services or designee.

“**Library Director**” means LS&S’s employee serving in the position of Director of the Library.

“**Library Staff**” means LS&S’s employees, including the Library Director, assigned by LS&S to perform the on-site services provided by LS&S to City pursuant to this Agreement.

“**PC**” is the abbreviation used for “personal computer.”

“**UPS**” is the abbreviation for “uninterruptible power supply”, which is a device that provides battery backup when the electrical power fails or drops to an unacceptable voltage level.

Section 3: Scope and Responsibilities

A. Administration and Management

- (1) *Technology Coordination.* The IS Director will meet with the Library Director and the LS&S Technology Representative approximately every six months, at a mutually agreeable date and time, to discuss technology needs, upcoming initiatives and any service or support concerns relating to Library operations.
- (2) *Technology Procurements.* City shall be responsible for establishing the appropriate standards and providing update or refreshment schedules for City provided hardware and software. Any non-standard hardware or software request must be justified and approved by the IS Director. City shall be responsible for purchasing and replacing all City-provided computing hardware and associated peripherals, including desktop PC’s, laptops, monitors, mice, keyboards, printers, copiers, fax machines, scanners, etc.

- (3) *Vendor service agreements and contracts.* City will enter into and maintain applicable service agreements or support contracts on City-provided computer equipment. The City will be responsible for maintain equipment is good working order at all times. Licensing will be appropriate and valid for the Library systems and software. Maintenance agreements and software support agreements will be kept current and accessible for support requirements.
- (4) *Technology planning and budgeting.* Library Staff and LS&S IT shall be responsible for preparing a written annual Technology Plan that defines the needs and technology solutions to meet those needs. Library shall solicit and receive comments and suggestions from City staff and other interested parties identified by the City in defining existing problems, necessary changes, and/or desired enhancements to technology services at the Library. LS&S, through the Library Director and LS&S IT, and City, through the IS Director, shall work together to review and define the Library's technology needs for purposes of long range planning, development of mid-year and fiscal year budgets and inclusion in the annually updated Technology Plan.
- (5) *Equipment inventory and lifecycle management.* The City IS Department shall be responsible for maintaining and updating inventories of City-owned technology assets, including the software loaded on all City-owned computers. The IS Department shall be responsible for picking up and properly preparing City-owned equipment for disposal, including a process for ensuring that all data is removed from the equipment. The IS Department will update the inventory and provide inventory revisions to the Library Director upon request.
- (6) *Audit and Review of Third-Party Network Connections.* Any third-party systems or connections into the City's computer network must be pre-approved and will be subject to initial and periodic security review by the City. Any required corrective actions are to be implemented immediately, and closure is to be confirmed by the IS Director.
- (7) *Internet content filtering management.* City shall be responsible for:
 - (a) Administering and monitoring the Internet Filter that serves the Library patron computers; and
 - (b) Providing annual support and maintenance costs associated with the filtering software for public terminals.

Library computers will be filtered for protection against Web-based threats, such as: malware, spyware, malicious sites, botnets and key loggers.
- (8) *Library website and URL namespace.* LS&S shall be responsible for the setup and maintenance of the Library's content on the Library's web portal. City will maintain the annual renewal for the Library's URL namespace. The City shall be responsible for hosting the library website in accordance with service levels outlined below.
- (9) *Support requests.* Incidents or requests for support should be reported to the City IS

Department Help Desk via any of the following means:

- (a) User Support Portal - typing in URL in their internet browser (<http://helpdesk>)
- (b) Calling (760) 839-4357
- (c) Emailing SUPPORT@EASCONDIDO.ORG

If the incident is urgent, users should call the Help Desk, rather than using the support portal or emailing. IS Department support hours being 8:00 A.M. to 6:00 P.M. Monday through Thursday and 8:00 A.M. to 5:00 P.M. on Friday central time (except on City holidays). For urgent issues and outages, Library Staff may request IS Department emergency support outside of the standard support hours.

- (10) *Compliance with IT Department policies and procedures.* LS&S employees using City-provided computing technology and equipment will be expected to adhere to all City technology usage policies, requirements and standards.
- (11) *City-provided user and email accounts.* The IS Department shall be responsible for creation and maintenance of all City domain user accounts and City e-mail accounts. The Library Director shall inform the IS Director as soon as possible after any staff terminations so that user access to core information technology resources can be revoked in a timely manner. To the extent feasible, the Library Director shall inform the IS Director in advance of any employment termination date of a Library Staff employee if there is reason to believe the employee whose separation from employment may result in a risk to the condition or security of the hardware, software, or data to which said employee has access. The City will make appropriate allowances for LS&S employees' access to LS&S business systems such as Email, HQ, Timesheets, etc. for the purposes of conducting normal LS&S business operations. This may include the requirement to install non-City software or modify software to accommodate the normal operation.
- (12) *Inventory Lists; Support Matrix.* IS Department staff and Library Staff and LS&S IT shall coordinate and cooperate in the preparation and maintenance of an inventory list of the hardware, installed software, and other computing technology equipment located in or assigned for use as part of Library operations. The inventory shall set forth the owner or provider of the hardware, software or equipment. IS Department staff and Library Staff shall also coordinate and cooperate with respect to development of a support matrix relating to the above inventory setting forth the party responsible for obtaining and/or providing support relative to the hardware, software, and/or equipment shown on the inventory. The initial inventory of installed software subject to this Paragraph (12) is agreed to be as set forth in Exhibit 1 to this Schedule B.

B. City Facility

- (1) *Security cameras.* City is responsible for the configuration and maintenance of the security cameras and associated equipment and network at the Library. Library Staff shall be responsible for reviewing security camera "video" in the event of an incident and contacting law enforcement authorities as appropriate.

- (2) *Technology equipment rooms.* The City IS Department is responsible for coordinating and working with City's Facilities Management Department to maintain power, UPS, air conditioning, environmental monitoring of the functioning equipment rooms.
- (3) *Audio visual equipment.* City is responsible for providing maintenance and support for all new and existing audio/video, systems in use at the library. Support includes: projector lamps, supplies, parts, repairs, preventative maintenance and any necessary adjustments. LS&S shall be responsible for failures caused by improper operation, cleaning or maintenance; accidents, damage, misuse or abuse caused by a LS&S employee. The City will be responsible for providing appropriate documentation and training on the proper usage of the equipment.

C. Library Automation System (Polaris)

LS&S currently maintains Polaris on its Customers sites. Should the Customer choose to migrate to Polaris, at the Customers expense, LS&S will be responsible for providing and supporting the Polaris Integrated Library System (ILS), as well as other automation systems required for effective operation of the Library. LS&S shall be responsible for acquisition, licensing and maintenance of any service/hardware required for the Polaris automation systems.

D. Desktop Computing

- (1) *General.* All City-owned desktops and laptops will have antivirus and desktop management agents installed, where applicable. Only software provided by or approved by the City shall be loaded on City-owned computers. IS Department staff will not be required to install any additional software provided by LS&S without proof of purchase or a copy of the license agreement. Any computer, server or network hardware provided by LS&S or any third-party must be pre-approved by the IS Department and must adhere to City standards before being connected to City-owned computer hardware or the City's data network. Library Staff shall be responsible for ensuring that all City-owned equipment is well maintained operated in accordance with the manufacturer's instructions and the City's direction. LS&S shall be responsible for failures caused by improper operation, cleaning or maintenance; accidents, damage, misuse or abuse caused by a LS&S employee
- (2) *Staff computers.* The City IS Department is responsible for the support of all City-provided computers which are designated for use by Library staff in performing their job functions. Support includes: installation of hardware and software, configuration, installation of operating system patches and updates, and troubleshooting of hardware, software or network connectivity problems. IS Department staff will provide assistance with supported applications which shall include: installation and updating of software; troubleshooting of common problems; and help with basic usage. IS Department staff will help users perform their job functions using computer technology but will not perform those functions for them. For example, IS Department will not create documents or design databases or web pages for users.

- (3) *Patron computers.* City Staff is responsible for the support of all City provided computers which are designated for use by library patrons which shall include operating system patches and updates; the troubleshooting of hardware, software or network connectivity problems. IS Department staff will work in conjunction with Library Staff and LS&S IT to troubleshoot and resolve any connectivity issues that may be associated with the City-provided data network.

- (4) *Other LS&S owned and provided hardware/software.* Library Staff shall be responsible for the support and maintenance of all LS&S-owned or provided hardware and/or software.

E. Server Hardware and Operating Systems

- (1) *City provided Servers.* The City IS Department is responsible for the support of all City-provided servers which are housed at the Library or designated for use by Library Staff or patrons, which shall include: installation, configuration, installation of operating system patches and updates and the troubleshooting of hardware, software or network connectivity problems.
- (2) *LS&S provided Servers.* LS&S shall be responsible for acquisition; licensing and maintenance of any LS&S-provided computing system or service. Any computer, servers or network hardware provided by LS&S or any third-party must be pre-approved by the IS Director and adhere to City standards before being connected to City-owned computer hardware or the City's data network.

F. Telephone, Network, Internet, and Printers

- (1) *City network connectivity (to facility and to staff).* The City IS Department is responsible for the maintenance and operation of all City-provided network equipment, including the configuration, support and maintenance of all routers, switches, firewalls and associated Ethernet and fiber connectivity.
- (2) *Wireless network connectivity.* The City IS Department is responsible for the maintenance and operation of all City-provided wireless network equipment, including the configuration, support and maintenance of wireless access points and associated routers, firewalls and cabling.
- (3) *City internet connectivity.* The City IS Department is responsible for the maintenance and operation of City-provided internet connectivity, including: modems, routers, switches and associated cabling. As of the Effective Date, City provides internet connectivity for the use of library patrons and Library Staff computers.
- (4) *Telephone system.* The City IS Department is responsible for the maintenance and operation of all City provided voice communications equipment at the Library, including: VoIP/PBX equipment, handsets and associated cabling.
- (5) *Printers and Copiers.* City Staff is responsible for the support of all City provided printers and copiers which are designated for use by library patrons. The City shall be responsible for the paper, toner, maintenance and repair costs of all printers and copiers for use by library patrons.

Exhibit 1 to Schedule B

Software used in Library: TBD

Software	Operational Responsibility	Financial Responsibility
Polaris	LS&S	City
Cassie/Cassie Manager*	LS&S w/City IT support	City
Winselect on Enterprise Server	LS&S w/City IT support	City
Deep Freeze on Enterprise Server	LS&S w/City IT support	City
Magic Info	LS&S for content creation. City IT support for server	City
Websense*	LS&S	City
McAfee Antivirus	City	City
Windows	LS&S w/City IT support	City
MS Office	LS&S w/City IT support	City

*or equivalent software

Exhibit 2 to Schedule B

Service Level Agreements

This section is reserved for guidelines on measurable service level objectives. The intent of service level definition is to understand the expectations for key library and technology services and mechanisms for measurement.

Technology Metrics

The metrics identified are critical to the reliable service delivery and operations of a library.

Measurement

- Response to Troubles or Trouble Tickets – Response to priority 1 issues will be 4 hours after notification. Once issues are acknowledged, the responsible party will act appropriately to resolve the issue. Priority 1 issues will receive the highest response and activity until resolved or downgraded. Responses to lower priority items will be based on acknowledge and assignment of action within a time that is appropriate to the condition or impact.
- Wi-Fi and Circuit Availability – access to communications is critical to normal operations of a library. Patron access to reliable communications is to be maintained at or above 98% availability during normal business/library hours.
- Wi-Fi and Circuit Throughput and bandwidth – Libraries provide a necessary public service to patron and staff via wireless and internet communications. It is expected that these services be monitored and measured to ensure patrons are not experiencing consistent delays and packet latency. As a benchmark, latency to the internet should be under 30 ms Round Trip delay as measured to the nearest server on a public network. Upload and Download speeds will be appropriate to the size of the library community and will be monitored and adjusted as needed.
- Patron Computers and Printers – access to patron computers, printers, and copies are to be maintained to 98 % availability. Patron computers are to be protected by anti-spam and anti-virus and locked down in such a manner as to allow for normal user interaction without allowing installation and modification.
- Staff Computers – access to the LS&S library management systems is critical to the operations of a library. While staff systems have “off line” modes available with limited function, it is expected that all staff computers be maintained and provided at 99% availability. This availability is slightly higher than patron systems due to its role in the library. Updates to operating system are to be reviewed and applied routinely or minimally quarterly.
- Web Systems Availability – access to the library web site will be maintained to 98% availability.
- Security – systems integrity will be protected by firewalls, policies, and physical controls maintained by the City. Filters and changes to virus definitions are to be maintained and updated within 72 hours of release. Critical server updates are to be applied as per vendors release schedule.

Definitions

- Priority 1 issue is an out of service condition that impacts library operations and patron activity.
- Priority 2 issues are an equipment or process failure that is limited in scope or impact. Priority 2 issues can be a single system or process being out of service or impaired. Priority 2 impacts are limited as to scope and service delivery.
- Priority 3 issues are minor in scope or limited in span and impact. This can also include items that require order or installation.
- Notification – call, email, text, trouble ticket generation, or conversation indicating an issue.
- Response – initial notification and confirmation of an issue.
- Resolution – Ticket closure with satisfactory return to normal operations.