

LIBRARY SERVICES AGREEMENT

This Agreement is made as of August 13, 2001 between

LIBRARY SYSTEMS & SERVICES, LLC, a Maryland limited liability company with a mailing address at 20250 Century Boulevard, Germantown, Maryland 20874 ("LSSI"); and the City of Calabasas, a California City with a mailing address at 26135 Mureau Road, Calabasas, California 91302-3172 ("City").

The parties agree as follows:

1. Services and Warranties.

- (a) *Services.* During the Term of this Agreement, LSSI will provide the labor and management services shown on Schedule A ("Services"). Except as shown on Schedule A, City will furnish all other facilities, labor, materials, furnishings, and equipment necessary for City's operation.
- (b) *Warranty on Services.* LSSI warrants that it will perform the Services with at least the care, diligence and expertise generally accepted in the library service industry.
- (c) *Warranty on Goods.* If LSSI furnishes and goods to City, LSSI will use its good faith efforts to extend the manufacturer's warranty, if any, to Customer. **There are no other warranties, express or implied, including warranties of merchantability or fitness for particular purposes.**

2. Terms and Termination.

- (a) *Term.* This Agreement takes effect on July 1, 2001, and continues in force for a period of three (3) years, unless sooner terminated in accordance with this Section 2.
- (b) *Termination for Convenience.* Either party may terminate this Agreement with or without cause by giving the other party six (6) calendar months notice of termination.
- (c) *Termination for Default.* If either party breaches any material provision of this Agreement, and fails to correct the breach (or, if breach cannot be corrected within thirty (30) days, fails to progress diligently towards correction) ten the other party may terminate this Agreement by giving ten (10) days written notice to the breaching party.

- (d) *Renewal.* This Agreement may be renewed or extended with the written consent of both parties.

3. Price and Payment.

- (a) *Price.* LSSI shall perform the Services for the rates, fees, and charges shown on Schedule A, plus any applicable taxes. LSSI and City shall annually negotiate rate, fees and charges shown in Schedule A.
- (b) *Payment in Annual Agreement.* LSSI shall invoice City monthly in advance. Unless disputed in writing, City shall pay invoices by the 20th of the month in which the services are provided. Balances unpaid after 20 days may bear interest at one and one quarter percent (1 1/4%) per month.
- (c) *Taxes.* LSSI shall add to its invoices any current or future taxes (other than LSSI's income tax) payable by LSSI on account of this Agreement, the Services, or City's payments hereunder, except to the extent Customer furnishes a certificate of exemption from such taxes.

4. Insurance and Indemnification.

- (a) *Insurance.* During the term of this Agreement, LSSI shall maintain in force at its own expense comprehensive general liability insurance coverage of at least two million (\$2,000,000) combines single limit, automobile liability insurance coverage of at least one million dollars (\$1,000,000) combined single limit, and worker compensation insurance as required by law. If requested, LSSI shall furnish City a certificate of such insurance.
- (b) *Indemnification.* LSSI shall defend, indemnify, and hold City harmless from and against any loss, amount paid in settlement, cost or expense (including reasonable attorney fees) arising out of injury or death of any person (except losses covered by worker compensation insurance), or loss or damage of any property, caused by the negligent or willful act of LSSI or its employees in performance of this Agreement.

5. Information, Intellectual Property and Employees.

- (a) *Information.* In the performance of this Agreement, LSSI may be exposed to information regarding the identity of the City's patrons, City may be exposed to information regarding LSSI's proprietary library management techniques, and either party may be exposed to other information designated in writing by the disclosing party 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; (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 threat of such breach, the party whose Confidential Information is threatened shall be entitled to injunctive or other equitable relief.

- (b) *Intellectual Property.* 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.

6. *Fines.*

LSSI will use its good faith efforts to collect all fines, but will not be responsible for any shortage in the absence of its own bad faith. All fines collected by LSSI will become the property of the City and will be used as directed for the City for additional library services.

7. *Library Grants.*

LSSI will use its good faith efforts to assist the City, as directed by its Library Commission, in its efforts to apply for federal and state library grants and/or discounts for which the City may be eligible.

8. *Miscellaneous.*

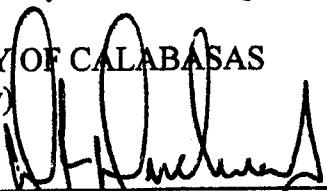
- (a) *Independent Contractors.* The relationship of the parties is that of independent contractors, and no partnership, joint venture, agency, employment, or other relationship is intended. LSSI shall defend, indemnify, and hold City harmless from and against any income, payroll or withholding tax assessed upon the compensation of any person performing the Services hereunder.
- (b) *Assignment.* Neither party may assign this Agreement without the prior written consent of the other party, except that LSSI may subcontract or delegate portions of the Services; provided, however, that in no case shall City be liable to any party other than LSSI, or for any amount in excess of the price specified on Schedule A.

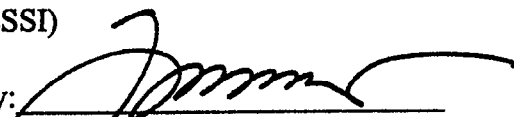
- (c) *Limitation of Liability.* In no case shall LSSI be liable for damages under this Agreement, including under Section 4(b), in excess of the amount paid to LSSI by City hereunder.
- (d) *Force Majeure.* LSSI shall not be liable for any failure or delay in performance of this Agreement due to causes beyond its control, including, but not limited to, strike, war, or civil disturbance, weather emergency, earthquake, or general failure of any necessary supply, service or utility.
- (e) *City's Representation.* City represents and warrants that it has all necessary legal authority to enter into and perform this Agreement, and that the person executing this Agreement on its behalf is legally authorized to do so.
- (f) *Notices.* Notices required or permitted under this Agreement shall be deemed received the fifth (5th) day after deposit in First Class mail, or the third (3rd) day after deposit with a recognized overnight courier, if addressed to the parties' respective addresses shown on the first page of this Agreement, and marked to the attention of (if to LSSI) Frank A, Pezzanite, President, or (if to City) Donald Duckworth, City Manager.
- (g) *Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- (h) *Entire Agreement.* This Agreement contains the entire understanding of the parties on the subject matter hereof, and superseded all prior statements and agreements on that subject. No failure or delay by either party in enforcing any provision of this Agreement shall operate as a waiver. This Agreement may be modified or waived only in writing signed by the party against whom such modification or waiver is sought to be enforced.

Intending to be legally bound, the parties have caused this Agreement to be executed by their duly authorized representatives.

CITY OF CALABASAS
(City)

LIBRARY SYSTEMS & SERVICES, LLC
(LSSI)

By: 

By: 

Name: D.F. DUCKWORTH

Name: FRANK PEZZANITE

Title: CITY MANAGER

Title: PRESIDENT

**Schedule A
Library Services Agreement
City of Calabasas
Calabasas, California**

The parties agree as follows:

Staffing:

Includes salaries, benefits, and overhead for an onsite staff to operate the present library of about 4,000 square feet located at 26135 Mureau Road, Calabasas, California 52 hours per week, six days of service including 5 hours on Sunday. This staff includes:

- a full-time library director,
- a librarian,
- a library technician/circulation coordinator,
- a library assistant II,
- 3.5 library aides,
- and .2 MCSE automation technician.

This staff equals 7.7 FTE. Additional automation support and senior West Coast library management support will be provided without additional charge on an as needed basis. The Library will follow the City's holiday schedule.

If the Library is relocated to a larger facility or if service hours are increased during the term of the contract, staffing levels and costs will be renegotiated to reflect the impact of the changes in service.

<u>Staffing cost:</u>	<u>YE 6/30/02</u>	<u>YE 6/30/03</u>	<u>YE 6/30/04</u>
	\$306,700	\$339,900	\$374,400

Automation:

- Software upgrades and maintenance as needed
- Telecommunication charges for Internet access
- OCLC charges for ILL and cataloging
- Periodical database licensing
- MCLS membership for ILL and other services
- LAN maintenance and computer hardware maintenance
- Hardware upgrades and maintenance as needed

\$21,000	\$24,000	\$26,000
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General Office Expenses:

Telephone, supplies, postage, training, etc.

\$13,200	\$15,000	\$16,500
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Total Costs:	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>
	\$340,900	\$378,900	\$416,900

Collection Development:

LSSI will administer the materials budget appropriated by the City. LSSI will charge a handling fee of 7.5% on all collection resources purchased or licensed for the library.

