

SPECIAL SERVICES AGREEMENT

THIS AGREEMENT, made this 28 day of December, 1999, by and between the CITY OF HEMET, California ("CITY"), and Library Systems & Services, L.L.C. ("LSSP") a Maryland Limited Liability Company ("CONSULTANT").

WHEREAS, CITY desires to retain a qualified individual, firm or business entity to provide consulting services related to operation of the City's existing public library and similar services related to the construction and operational design for the new City public library which is expected to be operational within the next two years; and

WHEREAS, CITY desires to engage CONSULTANT to provide such services by reason of its qualifications and experience for performing such services, and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. CONTRACT COORDINATION

- a. CITY. The City Manager or his designee shall be the representative of CITY for all purposes under this Agreement. The City Manager, or his designated representative, hereby is designated as the Contract Manager for the CITY. He shall supervise the progress and execution of this Agreement.
- b. CONSULTANT. CONSULTANT shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement for CONSULTANT. Mr. Gordon Conable is hereby designated as the Contract Manager for CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Contract Manager for any reason, the Contract Manager designee shall be subject to the prior written acceptance and approval of the CITY's Contract Manager. CONSULTANT's Contract Team is further described in Exhibit "A" attached hereto and incorporated herein by this reference. The individuals identified and the positions held as described in Exhibit "A" shall not be changed except by prior approval of CITY.

2. DUTIES OF CONSULTANT

- a. Services to be furnished. CONSULTANT shall provide all specified services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

- b. Laws to be observed. CONSULTANT shall:
- (1) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by CONSULTANT under this Agreement;
 - (2) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in CONSULTANT's performance under this Agreement, or the conduct of the services under this Agreement;
 - (3) At all times observe and comply with and cause all of its employees to observe and comply with all said laws, ordinances, regulations, orders, and decrees mentioned above.
 - (4) Immediately report to the CITY's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.
- c. Release of reports and information. Any video tape, reports, information, data, or other material given to, or prepared or assembled by CONSULTANT under this Agreement shall be the property of CITY and shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the CITY's Contract Manager.
- d. Copies of video tapes, report and information. If CITY requests additional copies of video tapes, reports, drawings, specifications, or any other material in addition to what the CONSULTANT is required to furnish in limited quantities as part of the services under this Agreement, CONSULTANT shall provide such additional copies as are requested, and CITY shall compensate CONSULTANT for the costs of duplicating of such copies at CONSULTANT's direct expense.
- e. Qualification of CONSULTANT. CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

3. DUTIES OF CITY

CITY agrees to cooperate with CONSULTANT and to perform that work described in Exhibit "A" attached hereto and incorporated by this reference.

4. COMPENSATION

The CONSULTANT will perform the ongoing work as described in Exhibit "A" for the following annual compensation:

Year 1 - \$247,156

Year 2 - \$259,512

Year 3 - \$272,484 (subject to exercise of third year option)

CONSULTANT will bill CITY monthly in advance and City will pay CONSULTANT'S bill(s) within 30 days of receipt. The CONSULTANT may not charge more than the amount shown in Exhibit "A" without prior approval of the CITY's Contract manager.

5. TERM; SUSPENSION; TERMINATION

- a. The initial term of this Agreement shall be for a two year period, subject to automatically renew for a third one year period unless the CITY takes action to terminate the Agreement at least sixty (60) days in advance of the second anniversary date. The "anniversary date" shall be the date one year from the date on which CONSULTANT commences services under this Agreement.
- b. The CITY's Contract Manager shall have the authority to suspend this Agreement wholly or in part, for such period as he deems necessary due to the failure on the part of the CONSULTANT to perform any provision of this Agreement for a period of sixty (60) days after written notice from the City specifying the failure.
- b. CONSULTANT will be paid the compensation due and payable to the date of temporary suspension.
- d. Right to suspend or terminate. Either party reserves the right to terminate

this Agreement for any reason by notifying the other party in writing six (6) months prior to termination and the City paying the compensation due and payable to the date of termination; provided, however, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT services which are of benefit to CITY. Such compensation is to be arrived at by mutual Agreement of the CITY and CONSULTANT and should they fail to agree, then an independent arbitrator is to be appointed and his decision shall be binding upon the parties.

- e. Return of materials. Upon termination as provided herein, CONSULTANT shall turn over to the CITY immediately any and all copies of videotapes, studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT, and for which CONSULTANT has received reasonable compensation, or given to CONSULTANT in connection with this Agreement. Such materials shall become the permanent property of CITY. CONSULTANT, however, shall not be liable for CITY's use of incomplete materials or for CITY's use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

6. INSPECTION

CONSULTANT shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONSULTANT are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the CITY's Contract Manager's inspection and approval. The inspection of such work shall not relieve CONSULTANT of any of its obligations to fulfill its Agreement as prescribed.

7. OWNERSHIP OF MATERIALS

All original drawings, videotapes and other materials prepared by or in possession of CONSULTANT pursuant to this Agreement shall become the permanent property of CITY, and shall be delivered to the CITY upon demand.

8. ASSIGNMENT: SUBCONTRACTORS: EMPLOYEES

This Agreement is for the performance of planning services of the CONSULTANT and is not assignable by the CONSULTANT without prior consent of the CITY in writing. The CONSULTANT may employ other specialists to perform services as required with prior approval by the CITY.

9. NOTICES

All notices herein under shall be given in writing and mailed, postage prepared, by certified mail, addressed as follows:

CITY: Mr. Richard J. Ramirez, City Manager
City of Hemet
450 E. Latham Avenue
Hemet, California 92543

CONSULTANT: Mr. Gordon Conable, V.P. of West Coast
Operations
Library Systems & Services
3392-A Durahart Street
Riverside, CA 92507

and

Mr. Frank A. Pezzanite, Chief Operating
Officer Library Systems & Services
20250 Century Blvd.
Germantown, Maryland 20874

10. INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the service hereunder. CONSULTANT further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. CONSULTANT certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of CITY. It is expressly agreed that, in the performance of the services hereunder, CONSULTANT shall at all times be deemed an independent contractor and not an agent or employee of CITY.

11. INDEMNITY

CONSULTANT hereby agrees to indemnify and save harmless CITY, its officers, agents and employees up to the value of this Agreement to CONSULTANT or the policy limit of required insurance policies as identified in Exhibit B, whichever is

greater, of and from:

- a. Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury or death of or damage to any person or corporation caused by any negligent act or omission of CONSULTANT under this Agreement or of CONSULTANT's employees or agents;
- b. Any and all damage to or destruction of the property of CITY, its officers, agents or employees occupied or used by or in the care, custody, or control of CONSULTANT, or in proximity to the site of CONSULTANT's work, caused by any negligent act or omission of CONSULTANT under this Agreement or of CONSULTANT's employees or agents;
- c. Any and all claims and demands which may be made against CITY, its officers agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee or agent of CONSULTANT under this Agreement, however caused, excepting, however, any such claims and demands which are the result of the sole negligence or willful misconduct if CITY, its officers, agents, or employees;
- d. Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or copyrights or claims caused by the use of apparatus, appliance, or materials produced or furnished by CONSULTANT under this Agreement; and
- e. Any and all penalties imposed or damages sought on account of the violation of any law or regulation or if any term or condition of any permit, when said violation of any law or regulation of any tem or condition of any permit is due to negligence on the part of the CONSULTANT.
- f. CONSULTANT, at its own cost, expense, and risk, shall defend CITY from any and all claims, demands, suits, actions, or other legal proceedings, including those to enforce any penalty that may be brought against CITY, its officers, agents or employees, and pay and satisfy any judgment or decree that may be rendered against CITY, its officers, agents, or employees in any such suit, action or other legal proceeding, when same were due to negligence of the CONSULTANT.

12. WORKERS COMPENSATION

CONSULTANT certifies that it is aware of the provisions of the Labor Code of

the State of California, which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and if certified that it will comply with such provisions before commencing the performance of the work of this Agreement.

13. **INSURANCE**

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "B" and made a part of this Agreement. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment and waiver if so approved in writing by the City Manager. CONSULTANT agrees to provide CITY with copies of required policies upon request.

14. **AGREEMENT BINDING**

The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

15. **WAIVERS**

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

16. **COSTS AND ATTORNEY'S FEES**

The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

17. **DISCRIMINATION**

No discrimination shall be made in the employment of persons under this Agreement because of the race, color, national origin, ancestry, religion or sex of such person.

If CONSULTANT is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this Agreement, it shall thereby be found a material breach of this Agreement. Thereupon, CITY shall have the power to cancel or suspend payable to CONSULTANT the sum of Twenty-five Dollars (\$25) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract, or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If CONSULTANT is found in violation of the nondiscriminatory provisions of this Agreement or the applicable affirmative action guidelines pertaining to this Agreement, CONSULTANT shall be found in material breach of this Agreement. Thereupon CITY shall have the power to cancel or suspend this Agreement, in whole or in part, or to deduct from the amount payable to CONSULTANT the sum of Two Hundred Fifty Dollars (\$250) for each calendar day during which CONSULTANT is found to have been in such noncompliance as damages for said breach of contract, or both.

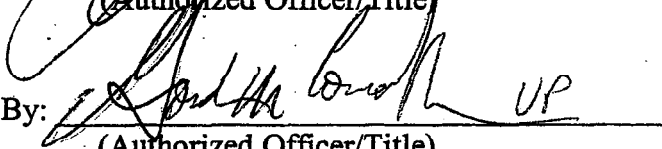
18. AGREEMENT CONTAINS ALL UNDERSTANDINGS

This document (including all exhibits referred to above and attached hereto) represents the entire and integrated Agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or Agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONSULTANT. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.


IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year first above written.

LIBRARY SYSTEMS & SERVICES, L.L.C.,
A Maryland Limited Liability Company

By:  COO
(Authorized Officer/Title)

By:  UP
(Authorized Officer/Title)

CITY OF HEMET



Richard J. Ramirez, City Manager

18. EXHIBIT A

18. Consultant's Special Services Proposal

18. EXHIBIT "B"

18. INSURANCE REQUIREMENTS

A. Insurance Requirements. CONSULTANT shall provide and maintain insurance, acceptable to the City Manager or City Attorney, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. CONSULTANT shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(a) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(b) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(c) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons employed by LSSI providing services on behalf of the CONSULTANT and all risks to such persons under this AGREEMENT.

2. Minimum Limits of Insurance. CONSULTANT shall maintain limits of insurance no less than:

(a) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(b) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

B. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this paragraph 15 shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to CITY.

2. General Liability and Automobile Liability Coverages.

(a) CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insured as respects: liability arising out of activities CONSULTANT performs; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection

afforded to CITY, and their respective elected and appointed officers, officials, or employees.

(b) CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONSULTANT's insurance.

(c) CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(d) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.

C. Other Requirements. CONSULTANT agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Attorney may require that CONSULTANT furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. CONSULTANT shall furnish certificates and endorsements from each subcontractor identical to those CONSULTANT provides.

2. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONSULTANT shall procure a bond

guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.