

**CITY OF UPLAND
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of March 11, 2024 by and between the City of Upland, a public agency organized and operating under the laws of the State of California with its principal place of business at 460 N. Euclid Avenue, Upland, CA 91786 (“City”), and Library Systems & Services, LLC, a Limited Liability Corporation with its principal place of business at 2600 Tower Oaks Blvd, Suite 200, Rockville, MD 20852 (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Consultant will administer the operations of City's library facilities (hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall perform the services and tasks described and set forth in Exhibit A attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. Consultant may purchase goods for use in the administration and operation of the Library (as defined below). At Consultant's sole discretion, Consultant may select sources of goods. Title to all items purchased by Consultant shall at all times reside in City. If Consultant furnishes any goods to City, Consultant will use good faith efforts to extend the manufacturer's warranty, if any, to City.

2. Compensation.

a. Subject to paragraph 2(b) below, The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full (exclusive of any current or future taxes).”

b. This amount shall not exceed \$16,186,507 in charges and \$1,655,720 in library materials for the total Initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

c. The City Manager may approve Additional Work, as further defined in Section 3, up to fifty thousand dollars (\$50,000.00) on an annual basis. In no event shall the total

sum of the agreement (original compensation amount and Additional Work) exceed **(\$18,342,227)**. Any additional work in excess of this amount shall be approved by the City Council.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term

a. This Agreement shall commence on August 1, 2024, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2034 (the "Initial Term"), unless sooner terminated pursuant to the provisions of this Agreement.

b. At the expiration of the Initial Term, and at the expiration of any subsequent term (if any), Consultant may request City to extend the Agreement for two additional one (1) year terms.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; pandemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

a. PERS Eligibility Indemnification

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City

and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or

omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend,

indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. City's Obligations.

a. City shall make available to Consultant without charge, solely for Consultant's use in performing the services, all properties, facilities, equipment, collections, supplies, records, files and data used or useful in the operation of the Library that are in City's possession, custody or control as of the date hereof. City reserves all ownership rights in such properties and Consultant shall return such properties to City, ordinary wear and tear excepted, at the termination or expiration of this Agreement.

City is responsible for the structure, improvements, maintenance, janitorial services and janitorial supplies, repairs and property insurance at the Library building (except for damage caused by Consultant). This includes the interior and exterior of the structure, all restrooms, electrical, building systems, and the heating and air conditioning system. Consultant shall work with

Consultant staff and City to ensure effective building maintenance by promptly identifying and reporting problems with the facilities.

City is responsible for maintaining the entire Library site, including landscaping and grounds maintenance.

b. City is responsible for providing security services for the Library and surrounding area.

c. City is responsible for payment of utilities at the Library facilities, including electricity, gas, water, waste disposal and recycling, telecommunications and Internet access.

d. City shall be responsible for providing, maintaining and supporting the telecommunications network, servers and computers in the Library, including periodic replacement of aged or obsolete equipment.

e. City shall be responsible for setting all policies that govern the operations of the Library.

f. City shall make available to Consultant without charge adequate space in the Library to develop and implement new revenue generating services, such as services to the business community, retail sales (books, gifts, refreshments, etc.) and other fee-based services, to benefit the community, City and Consultant ("Additional Services"). City will use its best efforts to assist Consultant in the promotion and implementation of these Additional Services. City shall have the final approval of all Additional Services, with such approval to not be unreasonably withheld, conditioned or delayed. Unless otherwise approved by City, the provision of these Additional Services shall not in any way substantially reduce the space or Library services provided prior to the implementation of these Additional Services.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

17 Termination or Abandonment

a. Either party may terminate this Agreement after twelve (12) calendar months from the date hereof with or without cause by giving the other party six (6) calendar months' written notice of termination. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization

Consultant shall assign the CEO as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:
City of Upland
460 N. Euclid Avenue
Upland, CA 91786
Attn: City Manager

CONSULTANT:
Todd Frager, CEO
2600 Tower Oaks Blvd, Suite 200
Rockville, MD 20852
Email:todd.frager@lsslibraries.com

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF UPLAND
AND LIBRARY SYSTEMS & SERVICES, LLC**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF UPLAND

LIBRARY SYSTEMS & SERVICES, LLC

By: DocuSigned by:
Michael Blay
ED26F9DCC9FF48A...
Michael Blay
City Manager

By: DocuSigned by:
Todd Frager
ED00958FD762455...
Its: Chief Executive Officer

Printed Name: Todd Frager

ATTEST:

By: DocuSigned by:
Keri Johnson
F427A9F65BE347A...
Keri Johnson
City Clerk

By: DocuSigned by:
Cullen Donohoe
7938E8885062443...
Its: Chief Financial Officer

Printed Name: Cullen Donohoe

APPROVED AS TO FORM:

By: DocuSigned by:
Steve Deitsch
8226570F6DB648E...
Stephen Deitsch
City Attorney

EXHIBIT A

TASKS TO BE PERFORMED

A. **Statement of Work**

Consultant will administer the operations of City's library facilities (collectively, "Library"), including the accounting for, purchase of and payment for payroll services and goods and services from vendors for budgeted supplies, other direct operating expenditures, Library Materials (as defined below and as provided for in Exhibit B) and Capital Items (as defined below) sufficient to operate the Library in accordance with the policies and guidelines approved by City.

Consultant shall provide, by and through its own employees or independent contractors ("Consultant Staff") any labor Consultant deems necessary for the operation of the library. The cost of the Consultant Staff shall be paid by Consultant and is included in the Operating Budget (as defined below). Consultant shall have the sole and absolute right to hire, manage, evaluate and terminate the employment of the Consultant Staff from time to time to perform work under this Agreement. Consultant will provide the appropriate staffing levels to keep the Library open to the public for fifty-two (52) hours per week.

In addition, in the second year and seventh year of this Agreement, Consultant will update the existing long-range plan for the City in cooperation with City, elected and appointed local officials, other community stakeholders and the Consultant Staff ("Plan"). Using current professional standards and practice, the Plan will identify challenges and opportunities for the Consultant Staff and corresponding strategic responses, including specific goals and measurable objectives.

This Plan, when approved by City, will help govern the direction and focus of the Consultant Staff in fulfillment of their mission of providing effective and efficient Library service to meet the personal, professional and lifelong learning needs of the patrons served by the Library.

B. **Scope of Work**

1. **Governance** - Develop and maintain effective working relationships with local staff, elected officials, Library Board members, other appointed officials and community groups such as the Friends of the library.
2. **Fiscal Responsibility:**
 - a. Develop and maintain effective and efficient financial procedures.
 - b. Review all aspects of Library operation and service for efficiency and cost- effectiveness, while making changes as appropriate.
 - c. Lead preparation of annual operating and capital budget requests.
 - d. Continue to seek innovative means of adding value for City at little or no additional cost, including completing grant applications.

3. **Reporting**

- a. Prepare and provide regular reports to City, describing Library activities and recommending changes in policies and operations as necessary and appropriate.
- b. Prepare and provide timely statistical reports to the City on Library activities.

4. **Staff Development and Coaching:**

- a. Support the professional development of all Consultant Staff.
- b. Provide leadership and guidance to maximize Consultant Staff effectiveness in Library operations.

5. **Public Services:**

- a. Provide prompt, friendly and accurate assistance in the use of the Library.
- b. Provide prompt and accurate circulation information and reference services.
- c. Provide requested materials promptly.

6. **Collections** - Provide high quality materials on a wide variety of subjects in varied formats for the community, according to established collection development plans.

7. **Programming** - Provide high quality, effective programs of interest to all major demographic groups in the community.

8. **Information Technology** - Develop short- and long-range plans to address the installation and support of sufficient hardware, software, network, telecommunications and other resources necessary to support the library's mission.

9. **Marketing** - Effectively disseminate information and promote use of the Library, resources and services.

10. **Facilities** - Work with Consultant Staff and local officials to ensure effective building maintenance by promptly identifying and reporting problems with the physical plant.

C. Library Materials and Materials Handling Fee

On behalf and for the benefit of City, Consultant will negotiate favorable discounts and prices from Library suppliers for the purchase of all Library materials, which shall include, but not be limited to, books, periodicals, newspapers, microfilms, e-books and other electronic publications, electronic database subscriptions, standing orders, audio and video materials and cases, automated reference services, binding, cataloging and processing costs and the Materials Handling Fee (as defined below) (collectively, "Library Materials"). The responsibility for Library collection development policies will remain with City, and all Library Materials selections will be the responsibility of Consultant. Consultant will place orders with the suppliers and perform the accounting functions related to those orders, including prompt payment of the invoices. In accounting for the cost of the Library Materials, Consultant shall include a fee of five percent (5%) of the cost of the Library Materials ordered ("Materials Handling Fee"). Monthly when invoiced, the Consultant will provide the City with an accounting of the Library Materials purchased.

D. Excluded Costs

City shall be responsible for the following:

- (a) Any costs, including payroll, expenses, damages or losses occurring prior to the original Effective Date.
- (b) Any Capital Items, which shall mean any capital acquisitions, improvements or replacements of any of the properties, facilities, equipment, computers, furniture, furnishings, fixtures or leasehold improvements of the Library, except that such Capital Items proposed by Consultant for its benefit shall be approved by City and paid for by Consultant.
- (c) Any amount of costs for unbudgeted repairs, maintenance and/or upkeep of Capital Items owned by City.
- (d) Any increases in the cost of any state or federal tariff items over the rate for such items prevailing as of the date of execution of this Agreement.
- (e) 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 Consultant at the time of the relevant incident.
- (f) Any worker's compensation or other claims arising from injuries sustained prior to the date hereof by any Library staff not employed by Consultant at the time of such injuries.
- (g) Any costs of any current or future employee benefits of City employees, including payroll taxes, retirement benefits, voluntary retirement incentives, pension contributions, employee buyouts or other similar programs adopted by City.

EXHIBIT B

Schedule of Charges/Payments

Period	Charges ("Operating Budget")		Minimum Library Materials*
	Yearly	Monthly	
August 1, 2024 - June 30, 2025	\$1,334,311	\$121,301	\$165,572
July 1, 2025 - June 30, 2026	\$1,492,008	\$124,334	\$165,572
July 1, 2026 - June 30, 2027	\$1,529,304	\$127,442	\$165,572
July 1, 2027 - June 30, 2028	\$1,567,536	\$130,628	\$165,572
July 1, 2028 - June 30, 2029	\$1,606,728	\$133,894	\$165,572
July 1, 2029 - June 30, 2030	\$1,646,892	\$137,241	\$165,572
July 1, 2030 - June 30, 2031	\$1,688,064	\$140,672	\$165,572
July 1, 2031 - June 30, 2032	\$1,730,268	\$144,189	\$165,572
July 1, 2032 - June 30, 2033	\$1,773,528	\$147,794	\$165,572
July 1, 2033 - June 30, 2034	\$1,817,868	\$151,489	\$165,572

*Total cost of Library Materials is not included in the Operating Budget and shall include the Materials Handling Fee. Funding for the Books and Materials will be determined by the City annually. The above amounts reflect the minimum that Consultant recommends the City budget for Books and Materials.

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

Prior to three (3) months before the end of the last Period to which the amount of Charges have been agreed upon, the parties shall begin to negotiate in good faith the amount of Charges that will apply to the next Period, if the Agreement is to be extended. If the parties have not reached such agreement thirty (30) days before the end of such Period, then the new charge for any agreed upon extension period 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 the percentage increase in the Employment Cost Index (ECI) in the immediately preceding twelve (12) month for the census region of the country in which the Library is located, or 2.5%, whichever is greater.

EXHIBIT C

HVAC

1.0 Capital Financing

1.1 LS&S shall provide for the Library, subject to the terms and conditions contained herein, funding to aid in the purchase of a new HVAC system for the Upland Library. LS&S shall, in concert with City, provide the City with \$300,000 to assist in this Library upgrade. City will provide LS&S with an invoice for the HVAC equipment and LS&S will remit payment to the City within thirty (30) days.

1.2 City will be responsible for the installation and maintenance of the HVAC system.

2.0 Termination

2.1 If City terminates this Agreement pursuant to Section 17(a) or LS&S terminates this Agreement pursuant to Section 17(b), City shall pay back LS&S the prorated amount of Capital Financing based on the years remaining on the contract. City shall have 30 days to pay LS&S. Example: If City terminates the contract at the conclusion of Year 7, City will pay LS&S \$90,000.