

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of August 11, 2014, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on August 5, 2014, by and between UNIQUE MANAGEMENT SERVICES, INC., a Kentucky corporation ("Consultant"), with a place of business at 119 E. Maple Street, Jeffersonville, Indiana 47130, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with library collection services ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Thirty-Five Thousand Dollars (\$35,000) annually, at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the necessary funds for such payment by the City in each fiscal year during the term

1 of this Agreement. For the purposes of this Section, a fiscal year commences on
2 October 1 of the year and continues through September 30 of the following year.
3 In the event that the City Council of the City fails to appropriate the necessary
4 funds for any fiscal year, then, and in that event, the Agreement will terminate at
5 no additional cost or obligation to the City.

6 C. Consultant may select the time and place of performance for
7 these services; provided, however, that access to City documents, records and the
8 like, if needed by Consultant, shall be available only during City's normal business
9 hours and provided that milestones for performance, if any, are met.

10 D. Consultant has requested to receive regular payments. City
11 shall pay Consultant in due course of payments following receipt from Consultant
12 and approval by City of invoices showing the services or task performed, the time
13 expended (if billing is hourly), and the name of the Project. Consultant shall certify
14 on the invoices that Consultant has performed the services in full conformance
15 with this Agreement and is entitled to receive payment. Each invoice shall be
16 accompanied by a progress report indicating the progress to date of services
17 performed and covered by the invoice, including a brief statement of any Project
18 problems and potential causes of delay in performance, and listing those services
19 that are projected for performance by Consultant during the next invoice cycle.
20 Where billing is done and payment is made on an hourly basis, the parties
21 acknowledge that this arrangement is either customary practice for Consultant's
22 profession, industry or business, or is necessary to satisfy audit and legal
23 requirements which may arise due to the fact that City is a municipality.

24 E. Consultant represents that Consultant has obtained all
25 necessary information on conditions and circumstances that may affect its
26 performance and has conducted site visits, if necessary.

27 F. CAUTION: Consultant shall not begin work until this
28 Agreement has been signed by both parties and until Consultant's evidence of

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1 insurance has been delivered to and approved by City.

2 2. TERM. The term of this Agreement shall commence at midnight on
3 August 1, 2014, and shall terminate at 11:59 p.m. on July 31, 2017, unless sooner
4 terminated as provided in this Agreement, or unless the services or the Project is
5 completed sooner.

6 3. COORDINATION AND ORGANIZATION.

7 A. Consultant shall coordinate its performance with City's
8 representative, if any, named in Exhibit "C", attached to this Agreement and
9 incorporated by this reference. Consultant shall advise and inform City's
10 representative of the work in progress on the Project in sufficient detail so as to
11 assist City's representative in making presentations and in holding meetings on
12 the Project. City shall furnish to Consultant information or materials, if any,
13 described in Exhibit "D", attached to this Agreement and incorporated by this
14 reference, and shall perform any other tasks described in the Exhibit.

15 B. The parties acknowledge that a substantial inducement to City
16 for entering this Agreement was and is the reputation and skill of Consultant's key
17 employee, Erin Knutsom. City shall have the right to approve any person
18 proposed by Consultant to replace that key employee.

19 4. INDEPENDENT CONTRACTOR. In performing its services,
20 Consultant is and shall act as an independent contractor and not an employee,
21 representative or agent of City. Consultant shall have control of Consultant's work and
22 the manner in which it is performed. Consultant shall be free to contract for similar
23 services to be performed for others during this Agreement; provided, however, that
24 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
25 Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from
26 Consultant's compensation; (b) City will not secure workers' compensation or pay
27 unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide
28 and Consultant is not entitled to any of the usual and customary rights, benefits or

1 privileges of City employees. Consultant expressly warrants that neither Consultant nor
2 any of Consultant's employees or agents shall represent themselves to be employees or
3 agents of City.

4 5. INSURANCE.

5 A. As a condition precedent to the effectiveness of this
6 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
7 duration of this Agreement, from insurance companies that are admitted to write
8 insurance in California and have ratings of or equivalent to A:V by A.M. Best
9 Company or from authorized non-admitted insurance companies subject to
10 Section 1763 of the California Insurance Code and that have ratings of or
11 equivalent to A:VIII by A.M. Best Company, the following insurance:

12 (a) Commercial general liability insurance (equivalent in scope to
13 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
14 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
15 coverage shall include but not be limited to broad form contractual liability,
16 cross liability, independent contractors liability, and products and
17 completed operations liability. City, its boards and commissions, and their
18 officials, employees and agents shall be named as additional insureds by
19 endorsement (on City's endorsement form or on an endorsement
20 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or
21 both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and
22 CG 20 37 07 04), and this insurance shall contain no special limitations on
23 the scope of protection given to City, its boards and commissions, and
24 their officials, employees and agents. This policy shall be endorsed to
25 state that the insurer waives its right of subrogation against City, its boards
26 and commissions, and their officials, employees and agents.

27 (b) Workers' Compensation insurance as required by the California
28 Labor Code and employer's liability insurance in an amount not less than

1 \$1,000,000. This policy shall be endorsed to state that the insurer waives
2 its right of subrogation against City, its boards and commissions, and their
3 officials, employees and agents.

4 (c) Professional liability or errors and omissions insurance in an
5 amount not less than \$1,000,000 per claim.

6 (d) Commercial automobile liability insurance (equivalent in scope
7 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
8 amount not less than \$500,000 combined single limit per accident.

9 B. Any self-insurance program, self-insured retention, or
10 deductible must be separately approved in writing by City's Risk Manager or
11 designee and shall protect City, its officials, employees and agents in the same
12 manner and to the same extent as they would have been protected had the policy
13 or policies not contained retention or deductible provisions.

14 C. Each insurance policy shall be endorsed to state that
15 coverage shall not be reduced, non-renewed or canceled except after thirty (30)
16 days prior written notice to City, shall be primary and not contributing to any other
17 insurance or self-insurance maintained by City, and shall be endorsed to state that
18 coverage maintained by City shall be excess to and shall not contribute to
19 insurance or self-insurance maintained by Consultant. Consultant shall notify City
20 in writing within five (5) days after any insurance has been voided by the insurer or
21 cancelled by the insured.

22 D. If this coverage is written on a "claims made" basis, it must
23 provide for an extended reporting period of not less than one hundred eighty (180)
24 days, commencing on the date this Agreement expires or is terminated, unless
25 Consultant guarantees that Consultant will provide to City evidence of
26 uninterrupted, continuing coverage for a period of not less than three (3) years,
27 commencing on the date this Agreement expires or is terminated.

28 E. Consultant shall require that all subconsultants or contractors

1 that Consultant uses in the performance of these services maintain insurance in
2 compliance with this Section unless otherwise agreed in writing by City's Risk
3 Manager or designee.

4 F. Prior to the start of performance, Consultant shall deliver to
5 City certificates of insurance and the endorsements for approval as to sufficiency
6 and form. In addition, Consultant shall, within thirty (30) days prior to expiration of
7 the insurance, furnish to City certificates of insurance and endorsements
8 evidencing renewal of the insurance. City reserves the right to require complete
9 certified copies of all policies of Consultant and Consultant's subconsultants and
10 contractors, at any time. Consultant shall make available to City's Risk Manager
11 or designee all books, records and other information relating to this insurance,
12 during normal business hours.

13 G. Any modification or waiver of these insurance requirements
14 shall only be made with the approval of City's Risk Manager or designee. Not
15 more frequently than once a year, City's Risk Manager or designee may require
16 that Consultant, Consultant's subconsultants and contractors change the amount,
17 scope or types of coverages required in this Section if, in his or her sole opinion,
18 the amount, scope or types of coverages are not adequate.

19 H. The procuring or existence of insurance shall not be
20 construed or deemed as a limitation on liability relating to Consultant's
21 performance or as full performance of or compliance with the indemnification
22 provisions of this Agreement.

23 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
24 contemplates the personal services of Consultant and Consultant's employees, and the
25 parties acknowledge that a substantial inducement to City for entering this Agreement
26 was and is the professional reputation and competence of Consultant and Consultant's
27 employees. Consultant shall not assign its rights or delegate its duties under this
28 Agreement, or any interest in this Agreement, or any portion of it, without the prior

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1 approval of City, except that Consultant may with the prior approval of the City Manager
2 of City, assign any moneys due or to become due Consultant under this Agreement. Any
3 attempted assignment or delegation shall be void, and any assignee or delegate shall
4 acquire no right or interest by reason of an attempted assignment or delegation.
5 Furthermore, Consultant shall not subcontract any portion of its performance without the
6 prior approval of the City Manager or designee, or substitute an approved subconsultant
7 or contractor without approval prior to the substitution. Nothing stated in this Section
8 shall prevent Consultant from employing as many employees as Consultant deems
9 necessary for performance of this Agreement.

10 7. CONFLICT OF INTEREST. Consultant, by executing this
11 Agreement, certifies that, at the time Consultant executes this Agreement and for its
12 duration, Consultant does not and will not perform services for any other client which
13 would create a conflict, whether monetary or otherwise, as between the interests of City
14 and the interests of that other client. And, Consultant shall obtain similar certifications
15 from Consultant's employees, subconsultants and contractors.

16 8. MATERIALS. Consultant shall furnish all labor and supervision,
17 supplies, materials, tools, machinery, equipment, appliances, transportation and services
18 necessary to or used in the performance of Consultant's obligations under this
19 Agreement, except as stated in Exhibit "D".

20 9. OWNERSHIP OF DATA. All materials, information and data
21 prepared, developed or assembled by Consultant or furnished to Consultant in
22 connection with this Agreement, including but not limited to documents, estimates,
23 calculations, studies, maps, graphs, charts, computer disks, computer source
24 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,
25 information, material and memorandum ("Data") shall be the exclusive property of City.
26 Data shall be given to City, and City shall have the unrestricted right to use and disclose
27 the Data in any manner and for any purpose without payment of further compensation to
28 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that

1 Data shall not be made available to any person or entity for use without the prior approval
2 of City. This warranty shall survive termination of this Agreement for five (5) years.

3 10. TERMINATION. Either party shall have the right to terminate this
4 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
5 prior written notice to the other party. In the event of termination under this Section, City
6 shall pay Consultant for services satisfactorily performed and costs incurred up to the
7 effective date of termination for which Consultant has not been previously paid. The
8 procedures for payment in Section 1.B. with regard to invoices shall apply. On the
9 effective date of termination, Consultant shall deliver to City all Data developed or
10 accumulated in the performance of this Agreement, whether in draft or final form, or in
11 process. And, Consultant acknowledges and agrees that City's obligation to make final
12 payment is conditioned on Consultant's delivery of the Data to City.

13 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and
14 shall not disclose the Data or use the Data directly or indirectly, other than in the course
15 of performing its services, during the term of this Agreement and for five (5) years
16 following expiration or termination of this Agreement. In addition, Consultant shall keep
17 confidential all information, whether written, oral or visual, obtained by any means
18 whatsoever in the course of performing its services for the same period of time.
19 Consultant shall not disclose any or all of the Data to any third party, or use it for
20 Consultant's own benefit or the benefit of others except for the purpose of this
21 Agreement.

22 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
23 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
24 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
25 without breach of this Agreement by Consultant; or (c) a third party who has a right to
26 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
27 disclosed pursuant to subpoena or court order.

28 13. ADDITIONAL COSTS AND REDESIGN.

1 A. Any costs incurred by City due to Consultant's failure to meet
2 the standards required by the scope of work or Consultant's failure to perform fully
3 the tasks described in the scope of work which, in either case, causes City to
4 request that Consultant perform again all or part of the Scope of Work shall be at
5 the sole cost of Consultant and City shall not pay any additional compensation to
6 Consultant for its re-performance.

7 B. If the Project involves construction and the scope of work
8 requires Consultant to prepare plans and specifications with an estimate of the
9 cost of construction, then Consultant may be required to modify the plans and
10 specifications, any construction documents relating to the plans and specifications,
11 and Consultant's estimate, at no cost to City, when the lowest bid for construction
12 received by City exceeds by more than ten percent (10%) Consultant's estimate.
13 This modification shall be submitted in a timely fashion to allow City to receive new
14 bids within four (4) months after the date on which the original plans and
15 specifications were submitted by Consultant.

16 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
17 amended, nor any provision or breach waived, except in writing signed by the parties
18 which expressly refers to this Agreement.

19 15. LAW. This Agreement shall be construed in accordance with the
20 laws of the State of California, and the venue for any legal actions brought by any party
21 with respect to this Agreement shall be the County of Los Angeles, State of California for
22 state actions and the Central District of California for any federal actions. Consultant
23 shall cause all work performed in connection with construction of the Project to be
24 performed in compliance with (1) all applicable laws, ordinances, rules and regulations of
25 federal, state, county or municipal governments or agencies (including, without limitation,
26 all applicable federal and state labor standards, including the prevailing wage provisions
27 of sections 1770 *et seq.* of the California Labor Code); and (2) all directions, rules and
28 regulations of any fire marshal, health officer, building inspector, or other officer of every

1 governmental agency now having or hereafter acquiring jurisdiction.

2 16. PREVAILING WAGES.

3 A. Consultant agrees that all public work (as defined in California
4 Labor Code section 1720) performed pursuant to this Agreement (the "Public
5 Work"), if any, shall comply with the requirements of California Labor Code
6 sections 1770 *et seq.* City makes no representation or statement that the Project,
7 or any portion thereof, is or is not a "public work" as defined in California Labor
8 Code section 1720.

9 B. In all bid specifications, contracts and subcontracts for any
10 such Public Work, Consultant shall obtain the general prevailing rate of per diem
11 wages and the general prevailing rate for holiday and overtime work in this locality
12 for each craft, classification or type of worker needed to perform the Public Work,
13 and shall include such rates in the bid specifications, contract or subcontract.
14 Such bid specifications, contract or subcontract must contain the following
15 provision: "It shall be mandatory for the contractor to pay not less than the said
16 prevailing rate of wages to all workers employed by the contractor in the execution
17 of this contract. The contractor expressly agrees to comply with the penalty
18 provisions of California Labor Code section 1775 and the payroll record keeping
19 requirements of California Labor Code section 1771."

20 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
21 constitutes the entire understanding between the parties and supersedes all other
22 agreements, oral or written, with respect to the subject matter in this Agreement.

23 18. INDEMNITY.

24 A. Consultant shall indemnify, protect and hold harmless City, its
25 Boards, Commissions, and their officials, employees and agents ("Indemnified
26 Parties"), from and against any and all liability, claims, demands, damage, loss,
27 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
28 costs and expenses, including attorneys' fees, court costs, expert and witness

1 fees, and other costs and fees of litigation, arising or alleged to have arisen, in
2 whole or in part, out of or in connection with (1) Consultant's breach or failure to
3 comply with any of its obligations contained in this Agreement, including any
4 obligations arising from the Project's compliance with or failure to comply with
5 applicable laws, including all applicable federal and state labor requirements
6 including, without limitation, the requirements of California Labor Code section
7 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or misrepresentations
8 committed by Consultant, its officers, employees, agents, subcontractors, or
9 anyone under Consultant's control, in the performance of work or services under
10 this Agreement (collectively "Claims" or individually "Claim").

11 B. In addition to Consultant's duty to indemnify, Consultant shall
12 have a separate and wholly independent duty to defend Indemnified Parties at
13 Consultant's expense by legal counsel approved by City, from and against all
14 Claims, and shall continue this defense until the Claims are resolved, whether by
15 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
16 breach, or the like on the part of Consultant shall be required for the duty to defend
17 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
18 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
19 in the defense.

20 C. If a court of competent jurisdiction determines that a Claim
21 was caused by the sole negligence or willful misconduct of Indemnified Parties,
22 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
23 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
24 percentage of willful misconduct attributed by the court to the Indemnified Parties.

25 D. The provisions of this Section shall survive the expiration or
26 termination of this Agreement.

27 19. AMBIGUITY. In the event of any conflict or ambiguity between this
28 Agreement and any Exhibit, the provisions of this Agreement shall govern.

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20. NONDISCRIMINATION.

A. In connection with performance of this Agreement and subject to applicable rules and regulations, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. It is the policy of City to encourage the participation of Disadvantaged, Minority and Women-Owned Business Enterprises in City's procurement process, and Consultant agrees to use its best efforts to carry out this policy in its use of subconsultants and contractors to the fullest extent consistent with the efficient performance of this Agreement. Consultant may rely on written representations by subconsultants and contractors regarding their status. Consultant shall report to City in May and in December or, in the case of short-term agreements, prior to invoicing for final payment, the names of all subconsultants and contractors hired by Consultant for this Project and information on whether or not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

21. EQUAL BENEFITS ORDINANCE.

Unless otherwise exempted in accordance with the provisions of the Ordinance, this Agreement is subject to the applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.

A. During the performance of this Agreement, the Consultant

1 certifies and represents that the Consultant will comply with the EBO. The
2 Consultant agrees to post the following statement in conspicuous places at its
3 place of business available to employees and applicants for employment:

4 "During the performance of a contract with the City of Long Beach,
5 the Consultant will provide equal benefits to employees with spouses and its
6 employees with domestic partners. Additional information about the City of
7 Long Beach's Equal Benefits Ordinance may be obtained from the City of
8 Long Beach Business Services Division at 562-570-6200."

9 B. The failure of the Consultant to comply with the EBO will be
10 deemed to be a material breach of the Agreement by the City.

11 C. If the Consultant fails to comply with the EBO, the City may
12 cancel, terminate or suspend the Agreement, in whole or in part, and monies due
13 or to become due under the Agreement may be retained by the City. The City
14 may also pursue any and all other remedies at law or in equity for any breach.

15 D. Failure to comply with the EBO may be used as evidence
16 against the Consultant in actions taken pursuant to the provisions of Long Beach
17 Municipal Code 2.93 et seq., Contractor Responsibility.

18 E. If the City determines that the Consultant has set up or used
19 its contracting entity for the purpose of evading the intent of the EBO, the City may
20 terminate the Agreement on behalf of the City. Violation of this provision may be
21 used as evidence against the Consultant in actions taken pursuant to the
22 provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor
23 Responsibility.

24 22. NOTICES. Any notice or approval required by this Agreement shall
25 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
26 postage prepaid, addressed to Consultant at the address first stated above, and to City at
27 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a
28 copy to the City Engineer at the same address. Notice of change of address shall be

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1 given in the same manner as stated for other notices. Notice shall be deemed given on
2 the date deposited in the mail or on the date personal delivery is made, whichever occurs
3 first.

4 23. COPYRIGHTS AND PATENT RIGHTS.

5 A. Consultant shall place the following copyright protection on all
6 Data: © City of Long Beach, California _____, inserting the appropriate year.

7 B. City reserves the exclusive right to seek and obtain a patent
8 or copyright registration on any Data or other result arising from Consultant's
9 performance of this Agreement. By executing this Agreement, Consultant assigns
10 any ownership interest Consultant may have in the Data to City.

11 C. Consultant warrants that the Data does not violate or infringe
12 any patent, copyright, trade secret or other proprietary right of any other party.
13 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
14 and employees harmless from any and all claims, demands, damages, loss,
15 liability, causes of action, costs or expenses (including reasonable attorney's fees)
16 whether or not reduced to judgment, arising from any breach or alleged breach of
17 this warranty.

18 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
19 that Consultant has not employed or retained any entity or person to solicit or obtain this
20 Agreement and that Consultant has not paid or agreed to pay any entity or person any
21 fee, commission or other monies based on or from the award of this Agreement. If
22 Consultant breaches this warranty, City shall have the right to terminate this Agreement
23 immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct
24 from payments due under this Agreement or otherwise recover the full amount of the fee,
25 commission or other monies.

26 25. WAIVER. The acceptance of any services or the payment of any
27 money by City shall not operate as a waiver of any provision of this Agreement or of any
28 right to damages or indemnity stated in this Agreement. The waiver of any breach of this

1 Agreement shall not constitute a waiver of any other or subsequent breach of this
2 Agreement.

3 26. CONTINUATION. Termination or expiration of this Agreement shall
4 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
5 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

6 27. TAX REPORTING. As required by federal and state law, City is
7 obligated to and will report the payment of compensation to Consultant on Form 1099-
8 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
9 resulting from payments under this Agreement. Consultant shall submit Consultant's
10 Employer Identification Number (EIN), or Consultant's Social Security Number if
11 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
12 Financial Management. Consultant acknowledges and agrees that City has no obligation
13 to pay Consultant until Consultant provides one of these numbers.

14 28. ADVERTISING. Consultant shall not use the name of City, its
15 officials or employees in any advertising or solicitation for business or as a reference,
16 without the prior approval of the City Manager or designee.

17 29. AUDIT. City shall have the right at all reasonable times during the
18 term of this Agreement and for a period of five (5) years after termination or expiration of
19 this Agreement to examine, audit, inspect, review, extract information from and copy all
20 books, records, accounts and other documents of Consultant relating to this Agreement.

21 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
22 designed to or entered for the purpose of creating any benefit or right for any person or
23 entity of any kind that is not a party to this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

UNIQUE MANAGEMENT SERVICES, INC., a Kentucky corporation

August 26, 2014

By Nicole Atkins
Name Nicole Atkins
Title President + CEO

August 26, 2014

By Charles L. Gary
Name Charles L. Gary
Title Secretary / Treasurer

"Consultant"

CITY OF LONG BEACH, a municipal corporation

Assistant City Manager

September 24, 2014

By Jeff Maiden
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City"

This Agreement is approved as to form on Sept. 9, 2014.

CHARLES PARKIN, City Attorney

By Charles Parkin
Deputy

EXHIBIT “A”

Scope of Work or Services

SCOPE OF WORK

City of Long Beach, Contract Renewal for Library Collection Services

COMPANY BACKGROUND

Unique Management Services, Inc., Library Division (UMS) has been involved in providing library material recovery services since 1988. UMS is a corporation legally established in the state of Kentucky, but completely operated out of its headquarters at 119 E Maple Street, Jeffersonville, Indiana. The principal owners of UMS are Charles L. Gary and Lyle J. Stucki. UMS has minimal debt and excellent financial capacity to continue collection efforts for the Long Beach Public Library (LBPL).

UMS specializes in meeting the particular needs of libraries and recognizes the unique relationship you have with your patrons. UMS understands that libraries are unique organizations and require a material recovery service tailored to meet their specific needs. To meet those needs, UMS developed and trademarked the Gentle Nudge® process to increase the recovery of materials, fines, and fees, while ensuring the maintenance of patron goodwill. We have had tremendous success recovering materials for libraries across the United States, Canada, the United Kingdom, New Zealand, and Australia. UMS is already registered with the State of California Secretary of State and provides collection services to many clients in that area.

UMS is presently serving over 1,500 public libraries; the largest individual client being the Toronto Public Library. This client circulates over 30 million and has 99 branches. Their high degree of satisfaction demonstrates UMS is equipped and capable of servicing large libraries. Additionally, UMS has served the Long Beach Public Library for the past 12 years producing an excellent 70.24% patron response rate.

UMS has a Strategic Partnership with Innovative Interfaces (III) and has cooperated with them to develop specific software to electronically process collection accounts. The objective of this software and our interfaces is to minimize time and paperwork required by library staff in order to submit patron accounts and report returns/payments. UMS is the only company with this Strategic Partnership.

In addition to the library's current ILS vendor, UMS also has strategic or sole source partnerships with all other major library system vendors including: SirsiDynix, Liblime, Polaris, TLC/CARL, and VTLS, Axiell, Biblionix, Civica, Infor. Additionally, UMS has helped develop similar automated processes for Open Source ILS commercial providers. As a result of our strategic partnerships with these ILS vendors, UMS technical staff is able to assist the library through any pending upgrades or future ILS migrations.

All of our reports, letters, telephone scripts, etc. are designed specifically for libraries. Unlike traditional collection agencies, our system provides delineated reports on material returned as well as cash received and amounts waived. These reports allow the library to manage and track the entire material recovery process. All communication encourages patrons to return material and make payments directly to the library. Any payments or materials sent to UMS are immediately forwarded to the library.

All work performed by UMS complies with all local and state confidentiality and security laws and follows all applicable provisions of the Federal Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA), and Telephone Consumer Protection Act (TCPA). Detailed records and documentation shall be maintained and provided to the Library. UMS will ensure the confidentiality, security and safety of all library files, documents, computer files, etc. All information provided to UMS will be used solely for the purpose of collection of those accounts.

UNDERSTANDING OF SERVICES REQUIRED

It is our understanding a listing of delinquent patron accounts, including minors, with balances of \$25 or more will be provided to UMS on a weekly basis, approximately two weeks after Library bill notices are sent. It is estimated that approximately 250-300 delinquent accounts would be submitted each month. The contract, however, shall be on an as needed, if needed basis.

It is understood that the library would be using the Innovative Interfaces (III) Integrated Library System Collection Agency Product. UMS would assist LBPL to set up three standard reports:

Collections Information Report – The listing of newly qualifying patron accounts (referred to as a submission report). This will run on a weekly basis.

Collections Update Report – Listing of any balance changes to accounts that are currently flagged for collection. This will run on a daily basis.

Collections Synchronization Report – A quality assurance tool that provides a listing of all accounts flagged for collection activity along with their current balance.

This submission report (Collections Information Report) would generate on a weekly basis and provide limited patron information including the patron name, address, phone number, patron ID number, whether the patron is a juvenile, date of birth, delinquency date, and total outstanding balance. UMS does not receive title information to ensure patron confidentiality is protected. This data would be transferred to us electronically using the Innovative Interfaces (III) Integrated Library System Collection Agency Product.

UMS will process new account data through an automated system designed specifically for the handling of information output by the Innovative Interfaces (III) Integrated Library System Collection Agency Product. This automated processing ensures that library data is quickly and accurately acted upon and the collection process initiated. Accuracy and timeliness help ensure positive patron goodwill and speeds up the process of recovering past due materials.

Upon receiving new accounts, we would provide the library with a file confirmation email and an acknowledgment verifying that we received the new patron accounts for processing. Following an initial skip-tracing run through the National Change of Address (NCOA) database, we then contact the patrons in our name and encourage them to return overdue materials to the library and pay their fines/fees.

We would recommend that LBPL continue to send a daily, itemized update list (Collections Update report) in electronic format showing details for borrowers who have responded to our contacts. The report would include borrower name, account number, and pertinent data such as amounts added, paid, waived, and value of materials returned. UMS will stop contact immediately for patrons who have cleared their accounts and adjust balances as appropriate for those who have responded before further collection activity takes place. At any time, the library can request that UMS suspend service on selective accounts. In these cases, UMS would suspend collection activity until notified by the library to continue.

We would recommend the Collection Synchronization report be generated on a quarterly basis as standard means of quality assurance. The report may be generated at any time. This measure to ensure data accuracy between UMS and the Library is unique within the industry and typically not provided by other agencies. It demonstrates our total commitment to ensuring accuracy, and patron goodwill.

We would provide the library a monthly, electronic report that details in alphabetical order by patron name and patron ID number, the value of materials returned, money received, charges waived, and balance due. We would also include a summarization of the collection performance to date. All work performed will be conducted according to all local and state confidentiality and security laws and follows all applicable provisions of the Federal Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA), and Telephone Consumer Protection Act (TCPA). Detailed records and documentation shall be maintained and provided to the library. We will ensure the confidentiality, security and safety of all library files, documents, computer files, etc. All information provided to UMS will be used solely for the purpose of collection of those accounts.

UMS would designate a representative to be the contact person for the Library. Furthermore, UMS has developed a training packet and training video to help new clients implement the service. Training support would be provided as needed to maintain a well-managed process. A UMS representative will also schedule on-site meetings with library staff to discuss the contract and any questions or issues that may arise. UMS would continue to have our technical expert work with library technical staff, at no additional cost, to work out all technical details for transferring appropriate data, as necessary.

UMS has cultivated over **10 years of experience working with Innovative and libraries utilizing the Innovative ILS and Debt Collection Product**. UMS is the only collection vendor that has extensive experience currently working with over 350 Innovative ILS users. Our experience with Innovative and the Debt Collection Product ensures that we will be able to quickly and effectively address any issues that may arise

UMS accepts automated data transfer and balance adjustment information from the Library database through the Innovative Interfaces (III) Integrated Library System Collection Agency Product and interfaces designed by UMS. At the time of data transfer, the Debt Collection software module automatically updates the Library's ILS by flagging accounts selected for submission to UMS and adding the \$15 long overdue fee to the accounts. UMS works with the Library at no cost to ensure accurate and timely transmission of data.

UMS also provides the Library an Acknowledgement Report on all electronically submitted accounts. This report is available via the secure client website's Document Sharing capability, and a notification email is immediately sent upon processing. Please refer to Exhibits A1 and A2 for a sample of this report and notification email.

UMS GENTLE NUDGE® PROCESS

UMS developed and trademarked the **Gentle Nudge®** process to increase the recovery of materials, fines, and fees, while ensuring the maintenance of patron goodwill. This 120-day process spaced at intervals designed to allow patron response time consists of a **minimum of three (3) scheduled letters and at least two (2) phone calls** and skip-tracing to gently elicit patron response. Non-responsive patrons may then be referred to Experian or TransUnion.

Letters gently encourage patrons to return the long overdue materials to the library and pay any fines and fees. These letters can be customized by the library. For instance, library branches can be listed on the reverse side and other-than-English texts can be included. We do, however, encourage libraries not to make changes to the main content of the letter, because we know from experience that our written communications are effective and meet all legal requirements. An attorney regularly reviews letters for legal compliance. All scheduled letters are printed on recycled paper. See Exhibits C1 – C4 for copies of written communications currently mailed on behalf of LBPL.

In addition to the three scheduled letters, other letters are included as needed (at no additional cost):

- Remaining Balance letter - Sent by UMS when a patron partially, but not fully, resolves their account. This prompts full material and revenue recovery and restores the patron to good standing with the library. This letter can be sent at any time, even after the 120-day process.
- Skip Tracing Letter – In the event that a new address is found, an additional letter is scheduled. This letter can be sent at any time, even after the 120-day process.
- Paid In Full letter – Posted on the InfoLink client website 24 hours after the account is resolved. This letter comes on UMS letterhead and assures the patron the account has been resolved.

If initial phone calls are unsuccessful, additional attempts are made to successfully contact the Library's patron and gently encourage a complete resolution of their account with the library. UMS is also sensitive to cultural needs and employs Spanish and French speaking contact specialists and inbound call specialists.

With regard to juvenile patrons, all written communications and phone calls are directed to the parent or guardian. We have excellent success with juvenile accounts without jeopardizing patron goodwill. LBPL will continue to have the ability to

approve all collection efforts related to juvenile accounts.

UMS continually analyzes the contact process and may enact change to optimize recovery. Any collection approach adopted by UMS will be similar in character and will contain a like number of contact attempts. UMS understands the importance of patron goodwill and strives to ensure this is maintained throughout the process. Our process is designed to encourage response, without offending or harassing the patron.

See Exhibits B1 – B4 for copies of written communications currently mailed on behalf of LBPL for collection activity. Please refer to Exhibit C for an example of the contact process. For a sample calling script see Exhibit D.

At the end of the 120-day **Gentle Nudge®** process, adult patrons with balances over the Library's chosen threshold of \$25, are reported to Experian and TransUnion. Unpaid accounts are maintained in active status for no less than 7 years or until the contract expires with the Library.

UMS provides skip-tracing services to locate patrons who have relocated or those with inaccurate contact information within the Library's database. At a minimum, this process occurs upon initial referral and approximately half way through the contact process on all accounts referred to UMS regardless of the balance of the account. When UMS finds a good address, we will contact the patron at the new location at no additional cost. UMS provides all newly acquired address information to the library in the monthly Change of Address report (COA). This report is provided in a comma delimited format to allow the library full ability to upload information to their database.

EXHIBIT “B”

Rates or Charges

COST PROPOSAL

City of Long Beach, Contract Renewal for Library Collection Services

COST

Unique Management Services, Inc., Library Division (UMS) charges a fixed rate of **\$8.95 per account** for full collection services. Full service includes the 120-day Gentle Nudge® process consisting of 3 letters and 2 phone calls to the patron, or parent/guardian. At the end of the collection process, adult accounts owing a balance of \$25 or more may be credit reported. Service also includes an address comparison with the National Change of Address (NCOA) for every account submitted, additional skip tracing when necessary, complimentary monthly reports, special reports upon request, staff training, access to your accounts via the *Info Link* website, and technical support.

If accounts are submitted in error and UMS is notified within 24 hours, then there is no charge for those accounts. UMS does not charge hourly rates or commission for recovery on collection accounts. Based on the Library's current submission rate per week, which averages 50-70 accounts, we propose that the Long Beach Public Library will be invoiced approximately **\$30,000 per year** for full collection services.

If the Long Beach Public Library chooses to utilize UMS' supplemental Small Balance Program for accounts under \$25, the charge is a fixed rate of **\$2.95 per account**. The Small Balance Program includes a 45-day process consisting of 1 letter on Library letterhead and 2 collection letters to the patron, or parent/guardian. There is no mention of credit reporting to the nation's largest credit reporting bureaus in these communications. Service also includes an address comparison with the National Change of Address (NCOA) for every account submitted, complimentary monthly reports, special reports upon request, staff training, access to your accounts via the *Info Link* website, and technical support.

If accounts are submitted in error and UMS is notified within 24 hours, then there is no charge for those accounts. UMS does not charge hourly rates or commission for recovery on Small Balance Program accounts. UMS can provide estimates of yearly invoicing for Small Balance Accounts upon request. The Small Balance Program is an optional recovery service, and the Long Beach Public Library is under no obligation to participate.

Budget Neutral Guarantee

UMS will maintain customer goodwill while keeping the service **budget neutral**. UMS guarantees not to charge, in collection fees, more than the amount of money recovered plus amounts waived. We understand that we will make adjustments to invoices for the difference between collection fees and the total money received plus amounts waived on accounts submitted to keep the service budget neutral. This will be based on (1) billings to date, (2) cumulative cash recovered, and (3) cumulative amounts waived.

To qualify for the budget neutrality guarantee, the Long Beach Public Library must have an acceptable fine structure as determined by UMS. The Library must submit accounts owing fines only balances, and accounts submitted must contain a \$10.00 processing fee and be no more than 60 days past due at time of submission.

It is our understanding that the Long Beach Public Library already meets these requirements. The Library has utilized UMS since December 2001. As of July 31, 2014, the Library has seen a return of **\$969,508.90** in materials recovered and **\$738,025.35** in cash received, keeping the service budget neutral. Approximately **70.24%** of the patrons processed have responded to UMS' collection efforts by returning materials or paying their fines and fees, resulting in a **4:1 Return on Investment** for the Library.

EXHIBIT “C”

City’s Representative:

Rachel Rock, Administrative Officer,

Long Beach Library

EXHIBIT “D”

Materials/Information Furnished: None