

RESOLUTION OF THE CITY COUNCIL

No. 522

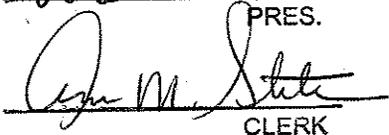
Approved NOVEMBER 20, 2009

RESOLVED, That the Library Services Agreement, together with Facilities Sublease Agreement and Washington Park Branch Library Lease Agreement, between the City of Providence and the Providence Community Library, is hereby ratified.

IN CITY COUNCIL
NOV 19 2009
READ AND PASSED

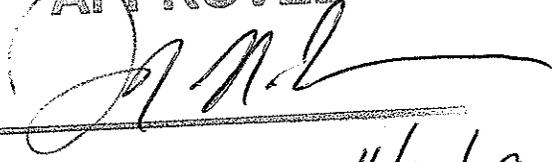


PRES.



CLERK

APPROVED



MAYOR

11/20/09

RECEIVED
CITY CLERK
NOV 20 2009



Mayor of Providence

David N. Cicilline

October 5, 2009

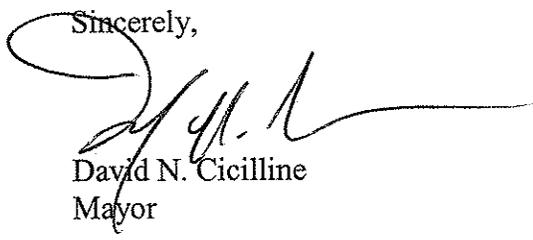
The Honorable Peter S. Mancini
Council President
C/O City Clerk's Department
City Hall
Providence, Rhode Island 02903

Dear Council President Mancini:

Enclosed is a copy of the Library Services Agreement between the City and the Providence Community Library (the "PCL"). This is a three-year agreement for the management of the nine Providence branch libraries, and includes leases by the City to the PCL of its two branch library buildings and subleases by the City of the other six branch library buildings leased to the City by the Providence Public Library (the "PPL"). (Fox Point is under a separate lease agreement.)

The Library Services Agreement is not binding on the City unless and until it is approved by the City Council (see Section 12.1 of the Agreement). Therefore, I would appreciate your presenting this Library Services Agreement to the City Council for its approval by resolution, a copy of which is enclosed.

Sincerely,



David N. Cicilline
Mayor

DNC: ljp
encs

City of Providence, Rhode Island 02903
Phone (401) 421-7740 Fax (401) 274-8240

**AMENDED AND RESTATED
LIBRARY SERVICES AGREEMENT**

July 1, 2009 – June 30, 2014

This Library Services Agreement, dated as of November 4, 2009 and effective as of July 1, 2009, is between the City of Providence, a Rhode Island municipal corporation (the "City"), and the Providence Community Library, a Rhode Island nonprofit corporation (the "PCL").

RECITALS

WHEREAS, the City needs efficient, community-centered, and innovative library services for the residents of the City of Providence (such persons, collectively, "Providence"), and intends that such services be delivered through an existing branch library system; and

WHEREAS, the PCL would like to provide efficient, community-centered, and innovative library services for Providence, which services will be delivered through the existing branch library system; and

WHEREAS, the City desires that the quality and reputation of the Branch Library(ies) continue to be improved, which requires investments from time to time; and

WHEREAS, the operation and management of the Branch Libraries has been performed by the Providence Public Library, a Rhode Island non-profit corporation (the "PPL"), which no longer desires to operate the same; and

WHEREAS, the City presently leases 7 Branch Libraries from the PPL, owns outright the Washington Park Branch Library, and it is the intention to own all of the Branch Libraries, with the exception of the Fox Point Branch Library, on or before January 1, 2010, and PCL will enter into a lease with the Boys & Girls Clubs of Providence for the Fox Point Branch Library, so-called; and

WHEREAS, each of the City and the PCL intends to strengthen the delivery of library services for Providence by its relationship with the other; and

WHEREAS, the parties entered into a Library Services Agreement dated as of July 1, 2009, which agreement, in addition to requiring annual appropriations from the Providence City Council, required the approval of the Providence City Council; and

WHEREAS, the Finance Committee of the Providence City Council, in its meeting of November 4, 2009, requested certain changes to the July 1, 2009 form of agreement, which changes are incorporated herein.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows.

AGREEMENT

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. The terms defined below, when used in this Agreement, have the meanings provided below.

“Affiliate” means, singly and collectively, any person that, directly or indirectly, is in control of, is controlled by, or is under common control with, the PCL, and the legal representative, successor or assign of any such person. For purposes of this definition, a person is “controlled by” the PCL if the PCL possesses, directly or indirectly, power either to (i) vote 10% or more of the securities having ordinary voting power for the election of directors of such person, or (ii) direct or cause the direction of the management and policies of such person, whether by contract or otherwise. Affiliate specifically includes any entity to which PCL transfers, directly or indirectly, any donations or grants to or for the benefit of PCL and/or any branch library in the City of Providence, with the exception of any Friends of a particular library branch.

“Aggregate Annual City Appropriation” means, as to any PCL Fiscal Year, the total amount of funding to PCL, whether through direct appropriation or through a master lease, appropriated and approved by the Providence City Council for such PCL Fiscal Year.

“Agreement” means this Library Services Agreement, including its schedules, exhibits and attachments, in each case as amended, modified, altered, supplemented and/or restated from time to time.

“Books” is defined in Section 5.8A.

“Branch Library(ies)” means the public libraries listed on Schedule 2.3, as Schedule 2.3 has been amended or modified and is in effect from time to time in accordance with Section 2.3D.

“Branch Library Closing” means a closing in excess of 30 days, a substantial decrease in operations, or a co-location or other joint use or creative arrangement for a Branch Library.

“Business day” means a day on which City Hall in Providence, Rhode Island is open to the public for the conduct of business for more than 6 hours in a 24-hour period.

“Budgetary Standards” is defined in Section 4.1C.

“City Board Appointees” means the persons appointed to the PCL Board of Directors pursuant to Section 5.1(d), (e), and (f).

“City Indemnified Parties” is defined in Section 7.1.

“Claim” is defined in Section 11.6.

“Confidential Information” is defined in Section 8.1.

“Equipment” and “City Equipment” mean all equipment, furniture, and fixtures currently located at the Branch Libraries and as further described in Section 2.6.

“Emergency Situation” is defined in Section 2.3B.

“Executive Committee” means the committee(s) of the PCL Board of Directors that is(are) charged with the responsibilities typically assigned to a board executive committee and such other powers as are delegated by the PCL Board of Directors.

“Facilities Lease Agreement” means, collectively, the Lease Agreements, each dated as of July 1, 2009, between the City, as Tenant, and the PPL, as Landlord, as such Lease Agreements may be extended, amended, modified, altered, supplemented, restated or terminated from time to time.

“Facilities Sublease Agreement” is defined in Section 3.4C.

“GAAP” means, as to a person, statements that are in accordance with the books and records of such person, present fairly the financial condition and results of operations of such person at the dates and for the periods indicated, and have been prepared in accordance with United States generally accepted accounting principles, consistently applied, for businesses similar to those of such person.

“including,” together with its correlative “include” and “includes,” means including without limitation unless specifically stated to the contrary.

“Initial Budget” is defined in Section 4.1C.

“Library Services” means the activities described on Schedule 2.1.

“Master Lease Funds” means any funds appropriated by the City Council that represent proceeds of a City of Providence FY __ Master Lease.

“Mayor” means the Mayor of the City of Providence.

“Operating Schedule” means, as to each Branch Library and at any given time, the operating schedule for such Branch Library established in accordance with Section 2.2.

“Payroll Costs” is defined in Section 3.5.

“PCL” is defined in the Introductory Paragraph.

“PCL Indemnified Parties” is defined in Section 7.2. “PCL Fiscal Year” means a 12-month period ending June 30.

“PPL” is defined in the Recitals.

“Providence” is defined in the Introductory Paragraph.

“Real Property Agreements” means, collectively, the Washington Park Branch Library Facility Lease Agreement, the Facilities Sublease Agreement, and those portions of this Agreement that relate to real property.

“Receiving Party” is defined in Section 8.2.

“Staff Appointee” is defined in Section 5.1.

“State Library Standards” means the statutes, rules and regulations, and other requirements in effect from time to time for libraries in the State of Rhode Island, including any rules and regulations of the State of Rhode Island Office of Library and Information Services or any successor department or agency.

“Strategic Plan” is an operating and capital plan (including long-range facilities planning) that identifies and addresses current and anticipated needs of Providence for library services for a period of at least 5 years, that makes recommendations regarding long range planning for the Providence library system, and that supports a sustainable 21st century library system that can be operated and maintained within the revenues that are potentially available and reasonably foreseeable. Each Strategic Plan will include consideration of periodic studies and planning for (i) more efficient and effective use of branch facilities for Providence, (ii) more efficient and effective delivery of library and library-related public services for Providence, and (iii) identifying new and creative methods to meet Providence’s needs for a branch library system.

“Washington Park Branch Library Facility Lease Agreement” is defined in Section 3.4A.

ARTICLE 2

LIBRARY SERVICES

Section 2.1 Agreement as to Services. The PCL shall provide Library Services to the City in accordance with the relevant Operating Schedule.

Section 2.2 Operating Schedule. From July 1, 2009 through and including September 30, 2009, the PCL shall use good faith efforts to deliver such of the Library Services listed on Schedule 2.2 as are reasonably possible. From October 1, 2009 through and including June 30, 2010, the PCL shall deliver Library Services pursuant to the operating schedule listed on Schedule 2.2. On or before April 1 of each year, the PCL shall notify the City in writing of any changes to the operating schedule proposed to be made by the PCL effective as of the next succeeding July 1. Such notification to the City shall include an explanation as to the reasons for such proposed changes.

Section 2.3 Branch Libraries.

A. **Initial Branch Libraries.** From July 1, 2009 through and including June 30, 2010, the PCL shall deliver Library Services at the locations listed on Schedule 2.3.

B. PCL-Requested Branch Library Closings. On or before April 1 of each year, the PCL shall notify the City in writing of any changes to Schedule 2.3 proposed to be made by the PCL effective as of the next succeeding July 1, including any proposed Branch Library Closing or any substantial decrease in the number of operating hours of any Branch Library. Such notification to the City shall include an explanation as to the reasons for such proposed changes. The PCL shall not close or substantially reduce the hours of any Branch Library without the written consent of the City except in an emergency that impacts the health and safety of any persons (each an “Emergency Situation”). In the event of an Emergency Situation, the PCL shall notify the City within a reasonable period of time after such Emergency Situation arises and advise the City of the nature of the emergency, and the City and the PCL shall use good faith effort to address the Emergency Situation to the reasonable satisfaction of the parties.

C. Permitted Denial of Access. In the event that the City reasonably determines in good faith that any Branch Library is non-compliant in any material respect with a law, ordinance or regulation, or any other governmental rule, order or determination now or hereafter enacted, made or issued, whether or not presently contemplated, applicable to such Branch Library or the use thereof and resulting in such Branch Library having to be closed, then the City has the right to deny access to such Branch Library without being in default of any Real Property Agreement.

D. Amendments to Schedule 2.3. Any change to Schedule 2.3 permitted by this Section 2.3 will represent an amendment to Schedule 2.3, provided that a closing of a branch library in an Emergency Situation as provided in Section 2.3B will represent a modification of Schedule 2.3, which modification expires at the end of the Emergency Situation.

Section 2.4 Operations in Accordance with Budget. The PCL shall operate, and shall cause its Affiliates to operate, in accordance with the relevant Final Budget. Any material deviation from the Final Budget shall be made only with the advance vote or consent of the PCL Board of Directors.

Section 2.5 Additional Funding.

A. State Library Matching Funds. The PCL and the City shall use commercially reasonable efforts to seek the maximum funding available from the State of Rhode Island for library services for Providence given the amount of the relevant Aggregate Annual City Appropriation.

B. Additional Funding: PCL. The PCL shall use commercially reasonable efforts to cooperate with the City should the City decide to seek, directly or indirectly, support for any library, including for library services or for capital expenses.

C. Additional Funding: City. The City shall use commercially reasonable efforts to cooperate with the PCL should the PCL decide to seek, directly or indirectly, support for any library, including for library services or for capital expenses.

Section 2.6 Equipment. During the term of this Agreement, PCL shall have the right to use any and all equipment, furniture, and fixtures in which the City has such a right and that are currently located at the Branch Libraries and/or used by the City or PCL in connection with

the operation of the Branch Libraries (the "City Equipment"). The PCL shall follow any written City policies and procedures provided to the PCL relating to trading in, selling or otherwise disposing of any City Equipment that becomes obsolete or is no longer useful for its original purpose.

ARTICLE 3

CITY OBLIGATIONS TO PCL

Section 3.1 Aggregate Annual City Appropriation. The City shall provide the following funding to the PCL:

- (a) for the period July 1, 2009 through and including June 30, 2010,
direct appropriations in an amount equal to \$3,300,000, and
if appropriated, proceeds of a City of Providence FY 2010 Master Lease (any proceeds of the City of Providence FY 2010 Master Lease to be in the maximum amount of \$200,000 or such other maximum amount as is agreed to by the parties), if any
for an aggregate amount equal to \$3,500,000;
- (b) for each succeeding PCL Fiscal Year,
direct appropriations and,
if appropriated, proceeds of a City of Providence FY __ Master Lease (any proceeds of the City of Providence FY __ Master Lease to be in the maximum amount up to 20% of the direct appropriations or such other maximum amount as is agreed to by the parties), if any,
in the aggregate amount equal to the amount appropriated and approved by the Providence City Council.

Section 3.2 Appropriations From Any City of Providence Master Lease. If appropriated, the PCL shall use Master Lease Funds only as permitted by the relevant City of Providence Master Lease; it being understood that all Master Lease Funds are subject to the relevant City of Providence Master Lease. Without limiting the generality of the foregoing, the PCL shall submit reimbursement requests and other documents or information, and shall satisfy all other requisites for funding under a City of Providence Master Lease, and such requests, other documents, and other requisites shall be true and correct in all respects.

Section 3.3 Estimation of Aggregate Annual City Appropriation. The City shall provide PCL with an estimation of the Aggregate Annual City Appropriation for the next succeeding PCL Fiscal Year as soon as such number is reasonably estimable. The PCL hereby acknowledges that any estimation whatsoever given by or on behalf of the City is non-binding, that the PCL may not hold the City accountable in respect of any such estimation for any reason

whatsoever, and that the amount of the Aggregate Annual City Appropriation for any PCL Fiscal Year will not be final until it has been definitively appropriated and approved by the Providence City Council.

Section 3.4 Branch Library Facilities Leasing.

A. Washington Park Branch Library Facility Lease Agreement. The City and the PCL shall enter into the Washington Park Branch Library Facility Lease Agreement attached to this Agreement as Exhibit C (as amended from time to time, the "Washington Park Branch Library Facility Lease Agreement").

B. Fox Point Branch Library Facility Lease. The PCL shall be responsible for entering into a lease for a Branch Library to be located in the Fox Point neighborhood of the City of Providence.

C. Sublease of Other Branch Library Facilities. The City shall assign certain of the City's rights and obligations under the Facilities Lease Agreement pursuant to a Facilities Sublease Agreement in the form attached hereto as Exhibit D (as amended from time to time, the "Facilities Sublease Agreement").

D. No Obligation to Make Capital Repairs. Notwithstanding anything in this Agreement, in any Real Property Agreement, or in the Facilities Lease Agreement to the contrary, neither the City nor the PCL has any obligation to make capital repairs to any Branch Library except with respect to the PCL's obligations under Section 4 and Section 10 of the Facilities Sublease Agreement and under the following provisions of the Washington Park Branch Library Lease Agreement: Section 5.4 (Violations, Environmental Conditions), Article 11 (Additional Covenants) and Section 16.9 (Leasehold Improvements). "Capital Repairs" means building structural repairs, or repairs to driveways, parking areas, walkways, roofs, windows, or any electrical, heating or plumbing.

E. Restructuring of Real Property Obligations. Notwithstanding anything to the contrary in any Real Property Agreement, the parties hereby agree that the terms and conditions of any of the Real Property Agreements may be renegotiated at the request of the City, at any time as of or after the date that (i) the City becomes the owner of any of the Branch Libraries listed on Schedule 1b, or (ii) resources become available to the PCL that permit the PCL to take on additional capital responsibilities, provided that, in the event such additional resources are not significant, any such renegotiation shall relate only to the use of such additional resources.

Section 3.5 Payroll. The City shall provide such payroll services to the PCL as is agreed to from time to time by the City and the PCL; provided that the obligation of the City to provide such services is contingent on the City's having the ability to do so without incurring expenses that will not be fully paid for by the PCL. The PCL agrees that it will reimburse the City for all amounts paid by the City on behalf of PCL for payroll, and for any reasonable costs and expenses associated with the delivery of such payroll services pursuant to any reasonable invoice delivered by the City to the PCL (such amounts, costs and expenses, "Payroll Costs").

Section 3.6 Timing of Payment of Aggregate Annual City Appropriation. The City shall make payments of the Aggregate Annual City Appropriation to the PCL as follows:

- (a) on or before the first Business day of the PCL Fiscal Year or within a reasonable period of time (not exceeding 14 days) after the definitive appropriation and approval by the Providence City Council, whichever is later, an amount equal to the Aggregate Annual City Appropriation for such PCL Fiscal Year less (1) a reasonable estimation of all Payroll Costs for the relevant PCL Fiscal Year plus (2) the amount of any Master Lease Funds for the relevant PCL Fiscal Year; and
- (b) within a reasonable period of time after funds become available and all requisites have been satisfied, the Master Lease Funds for the relevant PCL Fiscal Year.

Section 3.7 State Library Funding. The City shall, within a reasonable period of time after receipt thereof, remit to the PCL any funds received by the City from the State of Rhode Island that represent proceeds of PCL applications for grant-in-aid (GIA) funds, Public Library Construction Reimbursement funds, or Statewide Reference Resource Center grant funds.

ARTICLE 4

REPORTING REQUIREMENTS

Section 4.1 PCL Reporting. The PCL shall furnish or cause to be furnished to the City in form and substance reasonably satisfactory to the City, the following.

A. **Audited Annual Financial Statements.** As soon as practicable after the end of each PCL Fiscal Year and in any event within 120 days thereafter, audited financial statements of the PCL and its Affiliates, prepared on a consolidating and consolidated basis, including a balance sheet and statements of income, and cash flows, audited by a firm of reputable independent certified public accountants as having been prepared in accordance with GAAP, together with any management letter prepared by such accountant.

B. **Unaudited Monthly Financial Statements.** As soon as is practicable after the end of each calendar month and in any event within 10 days thereafter, financial statements of the PCL and its Affiliates, performed on a consolidating basis, including a balance sheet and statements of income, and cash flow for such period and the PCL Fiscal Year to date, such statements to be prepared and certified by the president or chief financial officer of the PCL as (i) complete and accurate to the best of that officer's knowledge, and (ii) having been prepared in accordance with GAAP, subject to variations from GAAP due to the absence of footnotes and normal year-end adjustments.

C. **Initial Budgets.** As soon as practicable and in any event at least 60 days prior to the end of such PCL Fiscal Year, a non-binding budget for each of the PCL and its Affiliates for the immediately succeeding Fiscal Year (each a "Initial Budget"). The PCL shall prepare each Initial Budget using the following standards: good faith; based on assumptions that are described within the document and that are reasonable in all material respects as of the date such document is submitted to the City; and based upon a reasonable estimation of funds to be available to the PCL for the operation of the Branch Libraries as of the date such document is submitted to the City (collectively, such standards, the "Budgetary Standards").

D. Final Budgets. As soon as practicable before the end of each PCL Fiscal Year and in any event by the later of the last Business day of the end of such PCL Fiscal Year or within 14 days after the definitive appropriation and approval by the Providence City Council, a Final Budget for the immediately succeeding Fiscal Year. The Final Budget will be the Initial Budget for the relevant Fiscal Year marked to show and describe in reasonable detail any changes necessary to correct inaccurate assumptions described in the Initial Budget (each a "Final Budget"). The PCL shall prepare each Final Budget in accordance with the Budgetary Standards. .

E. City Budget Estimates. Notwithstanding anything contained herein, the City shall provide the PCL prior to the due date for the Initial and Final Budgets a non-binding best estimate of the anticipated Annual City Appropriation for the immediately succeeding Fiscal Year.

F. Grant and Other Reports. Upon delivery to its intended recipient, a copy of each report, grant application, or other documentation requesting funds or otherwise delivered in connection with an existing grant or other funding program, whether to the State of Rhode Island, private foundations or individuals, or otherwise.

G. Notice of Certain Events. Prompt written notice of any event that causes or may reasonably be anticipated to cause a material adverse effect on the PCL, any Affiliate, and/or any Branch Library, and of any act, condition or omission that results or may reasonably be anticipated to result in the PCL's, any Affiliate's, an/or any Branch Library's failure to be in material compliance with any provision of this Agreement, together with an explanation thereof and, when determined, the actions the PCL proposes to take with respect thereto.

H. Monthly Statistical Reports. As soon as is practicable after the end of each calendar month and in any event within 10 days thereafter, monthly statistical reports, reported for each Branch Library and the Branch Libraries as a whole for the immediately preceding calendar month and the Fiscal Year to date, that include the following information:

- (i) Operating information that includes information as to
 - (1) circulation of materials,
 - (2) reference questions,
 - (3) computer assists,
 - (4) door count,
 - (5) number of items borrowed,
 - (6) number of items added to the collections, and
 - (7) number of new library card registrations;
- (ii) Programming information that includes the number of programs and program attendance for the following categories:
 - (1) early childhood,
 - (2) school age,
 - (3) young adult,
 - (4) adult,

- (5) family, and
 - (6) books and materials used within the programs; and
- (iii) Monthly and quarterly reports of summaries of the activities in the program of service.

Section 4.2 Access to Books and Records. The PCL shall always maintain an Executive Committee. The PCL shall permit, and shall cause its Affiliates to permit, the City's representative on the Executive Committee and its advisors to inspect the books and records of such entity and during normal business hours and upon at least 2 business days written notice, subject in any event to the Confidentiality provisions contained in Article 8.

ARTICLE 5

PCL GOVERNANCE

Section 5.1 PCL Board of Directors. PCL is governed by a board of directors as set out in its bylaws, and includes a maximum of 25 members, 1 of whom shall be appointed by the Governor of the State of Rhode Island; 2 of whom shall be appointed by the President of the Providence City Council; and 3 of whom shall be appointed by the Mayor (one of such Mayoral appointees to shall be a member of the Mayor's staff (the "Staff Appointee"). All City appointees shall be residents of the City of Providence.

Section 5.2 Delegation of Powers of City Board Appointees. The City Board Appointees may at any time delegate such appointees powers as a member of the PCL Board of Directors (including powers as a member of the Executive Committee) to another person by a written and notarized power of attorney executed by such City Board Appointee and approved by the Mayor or the City Council, as applicable. Such power of attorney, unless otherwise clearly indicated on the face thereof, shall be effective for 30 days after it is so-executed.

Section 5.3 Committees of the PCL Board of Directors.

A. **Board Committees.** The Staff Appointee shall be an ex officio voting member of the Executive Committee of the PCL Board of Directors . Decisions having material impact on the PCL or any Branch Library shall be determined by the PCL Board of Directors or its Executive Committee. The PCL shall have an Executive Committee at all times.

B. **Administrative Powers.** If the PCL Board of Directors delegates any administrative powers to any person who is not hired by the PCL Board of Directors or by the Executive Committee, then each such delegation shall be approved annually at or before July 1 of each year by the PCL Board of Directors.

Section 5.4 Articles of Incorporation and Bylaws. The copies of the Articles of Incorporation and Bylaws of PCL attached as Exhibit A and Exhibit B, respectively, are true, complete and correct copies of those documents as of the effective date of this Agreement.

Section 5.5 Strategic Planning. The PCL Board of Directors shall at all times have, and require the PCL to operate pursuant to, a Strategic Plan. The PCL Board of Directors shall

approve the Strategic Plan annually before the end of each PCL Fiscal Year, after giving reasonable consideration of input from the City.

Section 5.6 Monies Donated or Granted for Public Libraries. Any monies donated or contributed to the functioning of any one or more of the Branch Libraries (including all grant funds and all Aggregate Annual City Appropriations) that are controlled or managed, directly or indirectly, the PCL or its Board of Directors (it being understood that funds donated to a so-called "Friends of" a Branch Library are controlled by entities that are not the PCL or its Board of Directors), and not used to operate the Branch Libraries, including any reserve or similar accounts, shall be managed (including investments, expenditures, and disbursements) directly by the PCL Board of Directors. The PCL shall be permitted to use all revenues derived by PCL from the operation of the Branch Libraries or otherwise earned or raised by the PCL through its development activities to fund its obligations and perform its management services with respect to the Branch Libraries.

Section 5.7 PCL Board of Directors and City to Approve Branch Library Closings. Except in an Emergency Situations, and except as otherwise required by the City pursuant to Section 2.3C, the PCL shall not, and shall not permit, a Branch Library Closing without the prior written vote or consent of the PCL Board of Directors and of the City.

Section 5.8 Transfers of Assets.

A. Transfer from the City to the PCL. The City shall obtain from the PPL and hereby transfers or shall transfer forthwith all of its right, title and interest in the books, video, compact discs, records, maps, drawings, manuscripts, pictures, Equipment and the like located at the Branch Libraries (the "Books") to the PCL. Further, the City hereby agrees that, in the event the City acquires any additional right, title and interest in the Books after the date hereof but before the termination of this Agreement, the City shall transfer such right, title and interest to the PCL.

B. Transfer Restrictions. The PCL shall not, and shall not permit, any of its assets (including books and records and all rights under any contracts or other agreements) used or useful in the operation of public libraries to be transferred, or its rights therein to be terminated, outside of the ordinary course of a branch library's business without in each instance the prior written consent of the City; it being understood that books and other reference materials, and obsolete equipment, may be routinely disposed of in the ordinary course of a Branch Library's business and such disposal does not require the consent of the City under this Section 5.8.

Section 5.9 Compliance with OMA and APRA. The PCL shall comply with R.I.G.L. §42-46 (the so-called Open Meetings Act) and with R.I.G.L. §38-2 (the so-called Access to Public Records Act), in each case as amended from time to time, as an "agency" or "public body", including all interpretations of either such statute by any court or by the Office of the Rhode Island Attorney General.

ARTICLE 6

FACILITIES AND EFFICIENCY PLANNING

Section 6.1 Co-Located and Joint-Use Branch Libraries. The PCL and the City acknowledge that number and quality of branch libraries and branch library services that can be operated and maintained for Providence will depend in part on the possibility of new facilities becoming available, including where a branch library may be located in a space that also serves non-library functions (a “co-located” branch library) or where a branch library may be located in a space that is used jointly by the library and some other public or private institution(s) (a “joint use” branch library), or by some other creative option or collaboration, and on with additional funding sources to create and operate such co-located and joint use branch libraries. Accordingly, the PCL and the City shall work together in good faith to identify and take advantage of such opportunities; provided that no Branch Library may be moved from its then-current location except as set forth in Section 5.7 and/or Section 2.3.

Section 6.2 Cost Efficiencies. The PCL and the City shall work together in good faith to identify cost reductions and efficiencies that can be achieved in the delivery of library services to Providence (including through joint purchasing, shared contracting, and other similar efforts).

ARTICLE 7

INDEMNIFICATION

Section 7.1 Indemnity by the PCL. The PCL shall indemnify, defend, and hold harmless the City, and its employees, representatives, agents, successors and assigns (the “City Indemnified Parties”) from and against any and all demands, claims, suits, cause or causes of action, whether at law or in equity, costs, expenses and attorneys’ fees, and any liability whatsoever to anyone for any bodily injury or property damage resulting from or arising out of the willful misconduct or negligent acts or omissions of the PCL and/or its employees, representatives and agents in the performance of this Agreement by the PCL, except such damages or liability arising from, or attributable to the willful misconduct or negligent acts or omissions of such City Indemnified Party.

Section 7.2 Indemnity by the City. The City shall indemnify, defend, and hold harmless the PCL and its employees, representatives, agents, successors and assigns (the “PCL Indemnified Parties”) from and against any and all demands, claims, suits, cause or causes of action, whether at law or in equity, costs, expenses and attorneys’ fees, and any liability whatsoever to anyone for any bodily injury or property damage resulting from or arising out the willful misconduct or negligent acts or omissions of the City and/or its employees, representatives and agents in the performance of this Agreement by the City, except such damages or liability arising from, or attributable to the willful misconduct or negligent acts or omissions of such PCL Indemnified Party. This Section 7.2 is enforceable only to the extent permitted by law, and the City expresses no opinion as to the enforceability thereof, or as to the scope or requirements of applicable law in connection therewith.

ARTICLE 8

CONFIDENTIALITY

Section 8.1 Definition of Confidential Information. “Confidential Information” means information (whether in writing or otherwise) relating to a party or its business that is (a) identified as confidential to the recipient at the time of its disclosure, (b) all information delivered by the PCL to the City pursuant to Article 2, Article 3, Article 4, and Article 10 or that relates to payroll, books and records of the PCL or its Affiliates, Strategic Planning, non-public discussions of the PCL Board of Directors or Executive Committee, or insurance, and (c) all notes, analyses, compilations, studies, summaries, and other material, however documented, containing or based, in whole or in part, on any information described in clause (a).

Section 8.2 Confidentiality. Each of the City and the PCL acknowledge that it or its directors, officers, employees, agents or subcontractors (each a “Receiving Party”) may, in the performance of this Agreement, from time to time be exposed to or acquire Confidential Information of the other. Each party agrees to hold such Confidential Information in strict confidence and will not, and will use reasonable efforts to ensure that its directors, officers, employees, agents and subcontractors will not, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose such Confidential Information to third parties or use such Confidential Information for any purposes whatsoever other than as may be necessary for such party to perform its obligations under this Agreement. Each party agrees to protect the other party’s Confidential Information with at least the same level of care that it uses to protect its own Confidential Information of a similar nature, but in no event less than a reasonable standard of care, and shall take commercially reasonable steps to insure that each of its directors, officers, employees, agents and subcontractors who may be exposed to the Confidential Information keeps such Confidential Information confidential as required under this Section 8.2. Each party shall be responsible for any breach of this Section 8.2 by any director, officer, employee, agent or subcontractor of such party.

Section 8.3 Exclusion of Certain Confidential Information. Neither party’s obligations under Section 8.2 apply to any Confidential Information (i) that is in the public domain prior to, at the time of, or subsequent to the date of disclosure to the Receiving Party through no fault of the Receiving Party, (ii) that was rightfully in the Receiving Party’s possession free of any obligation of confidentiality under Section 8.2, (iii) that was developed by the Receiving Party independently of and without reference to any of the other party’s Confidential Information, (iv) disclosed by the City to any board of the City or City Council in connection with the performance of either party of this Agreement, or (v) is required to be disclosed by the City pursuant to a federal freedom of information act or state access to public records act request, or subpoena in any civil proceeding, or pursuant to any other relevant statute or regulation, provided that, in the case of this clause (v), the City, if possible, gives the PCL at least 5 (which number of days shall decrease correspondingly with any decrease in the number of days that the City has to deny access to a record under R.I.G.L. Section 38-2-7(a)) business days’ prior written notice of the intended disclosure and uses commercially reasonable efforts to cooperate with any effort on the part of the PCL to obtain a protective order preventing such disclosure.

Section 8.4 Remedies. Each party acknowledges and agrees that remedies at law may be inadequate to protect against an actual or threatened breach of this Article 8. Each party agrees that in the event of such an actual or threatened breach by the other party, such party shall be entitled, in addition to any other remedies and damages that may be available to such party at law, to injunctive or other equitable relief, without proof of actual injury, to restrain any such breach, threatened or actual. The other party further agrees to waive any requirement for security or the posting of any bond in connection with any such remedy. The provisions of this Section 8.4 shall survive the termination of this Agreement.

ARTICLE 9

TERMINATION

Section 9.1 Termination. This Agreement and each other Real Property Agreement shall expire or terminate on the earlier to occur of the following:

(a) midnight on June 30, 2014; provided that, thereafter, this Agreement will automatically renew for additional 5-year periods unless either party notifies the other on or before March 31 of the renewal year that such party intends that this Agreement terminate on June 30 of that same year;

(b) upon the occurrence of a material default under this Agreement or any Real Property Agreement; provided that such material default has not been cured within 30 calendar days after written notice thereof has been delivered to the defaulting party by the non-defaulting party; or

(c) upon the occurrence of 3 or more material defaults under this Agreement or any Real Property Agreement by the same party during any 12-month period, upon written notification of such termination to the defaulting party by the other party;

provided that any termination under the foregoing clause b or clause c does not terminate, limit or restrict any additional the rights and remedies of the non-defaulting party.

Section 9.2 Obligations from Termination Notification to Termination. All obligations under this Agreement and each Real Property Agreement of either party that relate to an ongoing relationship between the parties pursuant to this Agreement or such Real Property Agreement will terminate upon the delivery of the non-renewal notice by either party under Section 9.1(a).

Section 9.3 Cooperation Upon Termination. During the period leading up to the termination of this Agreement, the parties agree to negotiate in good faith to achieve continuity of library services to Providence.

Section 9.4 Transfers Upon Termination. Upon the termination of this Agreement, and so long as such termination did not occur under Section 9.1(b) due to a material default by the City, the PCL shall, at the written request of the City, deliver to the City or its designee possession of and rights to any and all assets (including copies of books and records dealing with the day-to-day operations of any branch library and all rights under any contracts or other

agreements) used in the operation of public libraries, together with passwords, source codes, and other data permitting reasonable access by the City or its designee to all such assets, in order to permit the City or its designee to continue operating branch libraries for Providence.

ARTICLE 10

PROPERTY RIGHTS

Section 10.1 Intellectual Property. Any and all intellectual property associated with the marketing of the Branch Libraries, including without limitation, ad campaigns, membership materials, leadership campaigns, special events, trademarks, trademark applications, copyrights, and copyright applications, shall be the exclusive property of the PCL, to which the PCL shall have the entire right, title and interest. PCL agrees that all such intellectual property associated with the marketing of the Branch Libraries shall only be used by the PCL in fulfilling its obligations hereunder or otherwise for the benefit of the Branch Libraries, and for no other purpose, without the prior written consent of the City.

Section 10.2 Personal Property. Any and all personal property acquired by the PCL in connection with the performance of its obligations hereunder shall be owned by the PCL. The PCL shall inventory and maintain sufficient records to identify and manage all personal property acquired by the PCL, and shall make such records available to the City for inspection during normal operating hours of the PCL, upon reasonable written notice. PCL agrees that any personal property acquired by the PCL using funds derived from the City shall only be used by the PCL in fulfilling its obligations hereunder or otherwise for the benefit of the Branch Libraries, and for no other purpose, without the prior written consent of the City.

Section 10.3 Rights Upon Termination. Nothing in this Article 10 supersedes the obligations of the PCL under any other provision of this Agreement, including Section 5.8B, Section 9.3 and Section 9.4.

ARTICLE 11

MISCELLANEOUS

Section 11.1 Assignments and Delegations.

A. No Assignments or Delegations. No party may assign any of its rights or delegate any of its obligations under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, change of control, operation of law, or any other manner. For purposes of the previous sentence, (1) "merger" means any merger in which a party participates, regardless of whether it is the surviving or nonsurviving entity, and (2) "control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of that person whether by voting power, contract or otherwise.

B. Ramifications of Purported Assignment or Delegation. Any purported assignment or delegation in violation of Section 11.1A is void.

Section 11.2 Successors and Assigns. This Agreement is binding upon, and inures to the benefit of, each signatory and its permitted successors and assigns.

Section 11.3 No Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the signatories hereto. Without limiting the generality of the foregoing, this Agreement does not inure to the benefit of, and may not be relied upon by, any third party claiming to be a third party beneficiary.

Section 11.4 Choice of Laws. The laws of the State of Rhode Island (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions contemplated hereby (including without limitation validity, interpretation, construction, performance, and enforcement).

Section 11.5 WAIVER OF JURY TRIAL. Each party knowingly, voluntarily, and intentionally waives its right to a trial by jury to the fullest extent permitted by applicable law in any legal action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. This waiver applies to any legal action or other proceeding, whether sounding in contract, tort, or otherwise. Each party hereby acknowledges that such party makes the waivers set forth in this Section 11.5 knowingly, voluntarily, and intentionally and after extensive consideration of the meaning and ramifications of these waivers with such party's attorneys.

Section 11.6 Mandatory Mediation and Arbitration. In the event of any controversy or claim between the parties arising out of or relating to this Agreement or the transactions contemplated hereby (including without limitation any controversy or claim sounding in tort) (each a "Claim"),

(a) the parties shall first attempt in good faith to promptly resolve such Claim by mediation, where one party provides a written request to the other for the appointment of a mutually acceptable mediator; provided that, in the event such mediation is not successful within 30 days of the delivery of such notice, then

(b) the parties shall resolve such Claim, together with any other Claim then-existing between the parties, by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules, as such rules are in effect at the commencement of the arbitration. Such arbitration shall be conducted before a panel of three arbitrators selected by AAA in accordance with its rules. The arbitrators are to interpret all controversies and claims arising out of or relating to this Agreement in accordance with the laws of the State of Rhode Island (without giving effect to its conflict of laws principles). All arbitration proceedings are to be conducted in Providence, Rhode Island. Any award, order or judgment pursuant to arbitration is final and binding and may be entered and enforced in any court of competent jurisdiction, and each party hereby submits to any such court for such purpose.

Section 11.7 Rights and Remedies Cumulative. The enumeration of the parties' rights and remedies set forth in this Agreement is not intended to be exhaustive. The exercise by a party of any right or remedy under this Agreement does not preclude the exercise of any other

right or remedy that may now or subsequently exist in law or in equity, by statute or otherwise, all of which are cumulative and are in addition to any other right or remedy given under this Agreement or under any other agreement between the parties.

Section 11.8 Notices.

A. Requirement of a Writing; Methods of Delivery. Each party giving or making any notice, request, demand, or other communication to the other party pursuant to this Agreement (each, a “notice”) shall give such notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid). A copy of each such notice shall be given simultaneously to the Providence City Council at the address listed on the signature page of this Agreement.

B. Addressees and Addresses. Any party giving a notice shall address such notice to the appropriate person at the receiving party at the address listed on the signature page of this Agreement or to another addressee or another address as designated by a party in a notice delivered pursuant to this Section 11.8

C. Effectiveness of a Notice. A notice is deemed delivered and received upon receipt as indicated by the date on the signed receipt.

Section 11.9 Consents.

A. Consent of the City. Any consent or waiver by the City given pursuant to this Agreement may be given by the signature of the Mayor or such person’s designee and ratified by the City Council.

B. Consent of the PCL. Any consent by the PCL given pursuant to this Agreement may be given by the signature of Chairman of the PCL Board of Directors.

Section 11.10 Amendments, Waivers, and Consents. Except with respect to amendments to Schedule 2.3 in accordance with Section 2.3D, no amendment or waiver of any provision of this Agreement, nor consent to any departure by any party from, or any addition to, the written terms of this Agreement, is effective unless such amendment, waiver, or consent is in writing, executed by both parties, and specifically identifies itself as an amendment, waiver, or consent, as the case may be, to this Agreement. In any event, any waiver or consent is effective only as to the specific addressee, in the specific instance, and for the specific purpose given. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

Section 11.11 Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction or, if applicable, arbitration, the enforcing body has the power to fashion and enforce another provision (instead of the provision held to be invalid, illegal, or unenforceable) that is valid, legal, and enforceable and carries out the parties’ intentions under this Agreement.

Section 11.12 Independent Contractor. The relationship between the City and the PCL hereunder pertaining to the management of the Branch Library(ies) shall be that of an independent contractor relationship, and nothing contained herein shall be interpreted to establish an agency, joint venture, or partnership relationship between the City and the PCL. The PCL is not the agent of the City, nor shall it hold itself out as such, and the PCL shall have no authority to bind the City to contracts or any other financial obligations, whether oral or written. Similarly, the City is not the agent of the PCL, nor shall it hold itself out as such, and the City shall have no authority to bind the PCL to contracts or any other financial obligations, whether oral or written. All contracts necessary or appropriated for the operation of the Branch Library(ies) shall be entered into by the PCL in its own name, and the City shall not be liable in any respect under such contracts.

Section 11.13 Entire Agreement. This Agreement, the Washington Park Branch Library Facility Lease Agreement, and the Facilities Sublease Agreement constitute the final agreement between the parties relating to the subject matter hereof and thereof, and is the complete and exclusive expression of the parties' agreement relating to such subject matter. All prior and contemporaneous negotiations, agreements, and statements between the parties relating to such subject matter are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation and warranty, or agreement of the other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

ARTICLE 12

CITY COUNCIL APPROVAL

Section 12.1 City Council Approval. The parties hereby acknowledge and agree that this Agreement is not binding on the City unless and until such time as it is approved in its entirety (including the appropriation of adequate funding) by the Providence City Council.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S).]

SIGNATURES

THE PARTIES HERETO hereby execute this Library Services Agreement to be effective as of the date specified in the Introductory Paragraph.

Address: CITY OF PROVIDENCE

Providence City Hall
25 Dorrance Street
Providence, RI 02903

By: _____
David N. Cicilline, Mayor

Address: PROVIDENCE COMMUNITY LIBRARY

Providence Community Library
PO Box 9267
Providence RI 02940

By: _____
Name Printed: _____
Title: _____

Approved as to form of Agreement:

Address: PROVIDENCE CITY COUNCIL

Providence City Hall
25 Dorrance Street
Providence, RI 02903

By: _____
Peter S. Mancini, President

Schedule 2.3
To the
Library Services Agreement
Effective as of July 1, 2009

Branch Libraries

Fox Point Branch Library
90 Ives Street

Knight Memorial Library
275 Elmwood Avenue

Mount Pleasant Branch Library
315 Academy Avenue

Olneyville Branch Library
One Olneyville Square

Smith Hill Branch Library
31 Candace Street

Rochambeau Branch Library
708 Hope Street

South Providence Branch Library
441 Prairie Avenue

Wanskuck Branch Library
233 Veazie Street

Washington Park Branch Library
1380 Broad Street

Schedule 1b
To the
Library Services Agreement
Effective as of July 1, 2009

Properties Subject to Sublease as of the Effective Date

Knight Memorial Library
275 Elmwood Avenue

Mount Pleasant Branch Library
315 Academy Avenue

Olneyville Branch Library
One Olneyville Square

Rochambeau Branch Library
708 Hope Street

Smith Hill Branch Library
31 Candace Street

South Providence Branch Library
441 Prairie Avenue

Wanskuck Branch Library
233 Veazie Street

Schedule 2.2
To the
Library Services Agreement
Effective as of July 1, 2009

Branch Library Services

At each Branch Library during such Branch Library's Operating Schedule, for Providence:

- a. Facilitating direct access to collections and public library services.
- b. Facilitating direct access to up-to-date books, periodicals, audio visual materials and information databases.
- c. Communicating with Providence in respect of the Library Services or any changes thereto.
- d. Facilitating indirect access to the collections in Rhode Island public libraries through the Ocean State Libraries Automated Network (formerly CLAN), and the State of Rhode Island delivery system.
- e. Providing any other services offered to members of the public through Rhode Island libraries generally by Ocean State Libraries, a Rhode Island nonprofit corporation, or any successor entity.
- f. Except with respect to any requirements relating to the condition of real property, adhering to State Library Standards.
- g. Providing delivery services for materials and supplies, and coordinating activities, among branch locations.
- h. Assisting in the use of the collections; answering reference and information questions; and making appropriate referrals, as reasonable staffing levels permit.
- i. Providing clerical functions including materials check in/check out, issuing library cards, placing and managing holds, shelving, and other usual clerical functions as necessary to use the library collections, as reasonable staffing levels permit.
- j. Offering technical services including materials ordering, processing, budgeting, accounting, and other usual technical service functions as necessary for the provision of library materials and the services described above.
- k. Providing early childhood story times and programs; by branch staff, as reasonable staffing levels permit, and by community services staff as private funding levels permit.

- l. Providing youth and adult programs that support lifelong learning; by branch staff, as staffing levels permit, and by community services staff as private funding levels permit.
- m. Provide administrative functions, including the following:
 - (i) staff planning, supervision, and coordination as required to fulfill this Agreement;
 - (ii) business services, including payroll, invoices, accounting;
 - (iii) human resources, including union contract negotiation and compliance, hiring, discipline, and other usual human resources functions as necessary; and
 - (iv) communications and program publicity as reasonable resources permit.
- n. Providing and maintaining web accessible computers, and training in their use, by branch staff, as staffing levels permit, and by community services staff as private funding levels permit.
- o. Providing reasonable levels of cleaning and basic maintenance of Branch Library buildings.
- p. Providing security services necessary for the safety of staff, patrons, and library resources.
- q. Fundraising both in the communities served by the Branch Libraries and by grants or other funding opportunities for libraries or library services generally.

Schedule 2.2
To the
Library Services Agreement
Effective as of July 1, 2009

Initial Operating Schedule

Rochambeau Branch Library (directions)
708 Hope Street, 401-272-3780
Monday & Thursday 1:00 pm - 9:00 pm
Tuesday & Wednesday 9:30 am - 6:00 pm
Friday & Saturday 12:00 - 6:00 pm
Calendar of Events

Fox Point Branch Library (directions)
90 Ives Street, 401-331-0390
Monday 9:00 am - 5:30 pm
Tuesday 1:00 - 8:00 pm
Wednesday, Thursday & Friday 1:00 - 6:00 pm
Calendar of Events

Smith Hill Branch Library (directions)
31 Candace Street, 401-272-4140
Monday & Tuesday 1:00 - 6:00 pm
Wednesday 1:00 - 8:00 pm
Thursday 9:00 am - 5:30 pm
Friday 1:00 - 6:00 pm
Calendar of Events

Mt. Pleasant Branch Library (directions)
315 Academy Avenue, 401-272-0106
Monday & Tuesday 1:00 - 9:00 pm
Wednesday & Thursday 9:30 am - 6:00 pm
Friday & Saturday 12 - 6:00 pm
Calendar of Events

Olneyville Branch Library ([directions](#))
1 Olneyville Square, 401-421-4084
Monday 1:00 - 6:00 pm
Tuesday 9:00 am - 5:30 pm
Wednesday 1:00 - 8:00 pm
Thursday & Friday 1:00 - 6:00 pm
[Calendar of Events](#)

Knight Memorial Library ([directions](#))
275 Elmwood Avenue, 401-467-2625
Monday & Wednesday 12:00 - 8:00 pm
Tuesday & Thursday 9:30 am - 6:00 pm
Friday & Saturday 12:00 - 6:00 pm
[Calendar of Events](#)

South Providence Branch Library ([directions](#))
441 Prairie Avenue, 401-467-2619
Monday, Thursday & Friday 1:00 - 6:00 pm
Tuesday 1:00 - 8:00 pm
Wednesday 9:00 am - 5:30 pm
[Calendar of Events](#)

Wanskuck Branch Library ([directions](#))
233 Veazie Street, 401-274-4145
Monday 9:00 am - 5:30 pm
Tuesday & Wednesday 1:00 - 6:00 pm
Thursday 1:00 - 8:00 pm
Friday 1:00 - 6:00 pm
[Calendar of Events](#)

Washington Park Branch Library
1316 Broad Street, 401-781-3136
Monday 9:00 am - 5:30 pm
Tuesday, Wednesday & Friday 1:00 - 6:00 pm
Thursday 1:00 - 8:00 pm
[Calendar of Events](#)

Handicap Accessibility
With the exception of Knight Memorial and Smith Hill, all libraries are accessible to the handicapped. Accessibility to restrooms and some areas are limited at various locations. Please call branches for specific information.

Schedule 5.1
To the
Library Services Agreement
Effective as of July 1, 2009

Branch Library Neighborhood Map

Exhibit A
To the
Library Services Agreement
Effective as of July 1, 2009

Articles of Incorporation of the PCL

Exhibit B
To the
Library Services Agreement
Effective as of July 1, 2009

Bylaws of the PCL

Exhibit C
To the
Library Services Agreement
Effective as of July 1, 2009

Form of Washington Park Branch Library Facility Lease Agreement

Exhibit D
To the
Library Services Agreement
Effective as of July 1, 2009

Form of the Facilities Sublease Agreement between the City and the PCL