

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

214



FROM: County Library

SUBMITTAL DATE:

June 23, 2009

SUBJECT: Agreement for Automation Services
(Riverside County Library System and San Bernardino Library System)

RECOMMENDED MOTION: That the Board approve and authorize the Chairman to sign the Agreement for Automation Library Services with San Bernardino County Library System for the period July 1, 2009 - June 30, 2014.

BACKGROUND: In 2004, to encourage the upgrading of library automation systems and to foster cooperation between library jurisdictions, the State Library awarded a \$259,000 grant to Riverside and San Bernardino Counties to jointly upgrade their library automation systems. The system went live in October, 2004. The two counties now wish to renew this valuable partnership, sharing the on-going costs of system maintenance equally.

The Inland Library Network, believed to cover the largest geographical distance of any automated library network, has made possible the efficient and cost-effective sharing of library resources across jurisdictional lines. San Bernardino County is Riverside County's primary partner, but the City of Moreno Valley, the City of Murrieta, and the College of the Desert also participate as client libraries.

Nancy Johnson

Nancy Johnson, County Librarian

(Continued)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2009-2014

SOURCE OF FUNDS: County of San Bernardino	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Gary M. Christmas*

Gary M. Christmas

County Executive Office Signature

FORM APPROVED BY COUNTY COUNSEL
 BY: PATRICIA SMITH
 DATE: 5/27/09
 Departmental Concurrence

Dept't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 4/22/04 3.15

District: ALL

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.19

Form 11 - Agreement for Automated Library Services
(Riverside County Library System and Bernardino County Library System)
June 23, 2009
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In 2007, Inyo County joined the Network. Participating libraries retain the right to set their own unique policies related to patron registration and notification, collection acquisition, materials management, and loan of library materials. As part of its contract with the County of Riverside, Library Systems and Services, LLC (LSSI) is responsible for contracting with the vendor, currently SirsiDynix Corporation, for on-going system maintenance and upgrades.

Through this shared system, Riverside County residents have access to the almost 3.5 million items displayed in the Inland Library Networks shared library catalog. Access is further enhanced by direct delivery to the home library of the requesting library user.

AGREEMENT FOR
AUTOMATED LIBRARY SERVICES
(Riverside County Library System and San Bernardino County Library System)
FY 2009 - 2014

This Agreement is made and entered into by and between the County of Riverside ("Riverside"), and the County of San Bernardino ("San Bernardino"), hereinafter jointly referred to as the "Parties" with respect to the following facts:

A. San Bernardino and Riverside County Library systems currently share a Sirsi Corporation (dba SirsiDynix) circulation system ("Symphony") for the coordination of their respective circulation systems (hereinafter referred to as the "Mutual Automation System" ("MAS")) pursuant to the terms of the Agreement For Automated Library Services previously entered into by the Parties for the period of May 4, 2004 to June 30, 2007 and as amended to June 30, 2009.

B. In 2004, the Inland Library System received a grant from the California State Library in the amount of \$259,000 to upgrade the circulation systems of both the San Bernardino and Riverside County Library Systems to a Unix based regional network. In addition to the grant, funds contributed in equal proportion by the Parties provided for the purchase, operation and maintenance of the MAS to date.

C. San Bernardino and Riverside now wish to continue this shared MAS network, with its attendant cost savings, and agree that Riverside will continue to host the automated library services equipment required by the MAS network.

NOW, THEREFORE, the parties hereto agree as follows:

1. RELATIONSHIP BETWEEN THE PARTIES.

- a. Under this Agreement, THE Parties will continue to make equal financial contributions for various shared automated library services and products used by both Parties including the upgrade of the circulation system of both counties and other automated library services including reports, logging of bibliographic records, access to

bibliographic records and access to the Internet. Optional software or upgrades purchased by one party for its sole use shall be the sole responsibility of that party.

- b. The Parties will continue to participate in negotiations on any contract contemplated or executed under this agreement and shall each have the right of prior refusal of any action taken by the other party for any contract contemplated or executed pursuant to this agreement.

2. TERM. The term of this Agreement shall be from July 1, 2009 to June 30, 2014. Thereafter, this Agreement may be renewed, by mutual consent of the parties, upon formal action of the Board of Supervisors, for up to five (5) additional one (1) year periods. In no event shall this Agreement remain in effect past June 30, 2019.

3. SCOPE OF WORK. The scope of work, as set forth below, is subject to the terms of the existing contract between the Parties and Sirsi, as amended from time to time, which is attached hereto as Exhibit "A" and incorporated herein by reference. The work is generally described to include the following automated library services to be performed by Riverside as the Administrator:

- a. Riverside, through its contract with Sirsi or mutually acceptable vendor, will continue to coordinate the activities necessary for the maintenance of the circulation system for both Riverside and San Bernardino. Riverside and San Bernardino shall negotiate the contract with Sirsi, or comparable vendor, and may extend the terms and conditions of that contract to any entities choosing to utilize automated library services through contracts with Riverside.
- b. The Parties will be provided with equal access to shared electronic databases and services.
- c. Nothing in this Agreement shall be construed as restricting the rights of either Party to make local decisions and set local policies about the

administration, management implementation and control of its own library, library service, and library resources, and to operate according to the policies and rules established by its governing body.

- d. The Parties shall apprise each other of significant policy decisions which directly impact the duties and scope of services provided under this Agreement.
- e. Riverside shall be the host site for the system server (hardware).
- f. Both Parties shall be provided with network access to the automated services system.
- g. The scope of the work, as all of the above work is more specifically set forth in the contract to Sirsi, as attached hereto as "Exhibit A" and made a part hereof by this reference, and as may be amended from time to time.

4. PAYMENT. Payment shall be apportioned for and made equally by both parties for all shared costs incurred pursuant to this agreement, including but not limited to the purchase and maintenance of required hardware, purchase and maintenance of system software, annual software license fees, annual server maintenance costs for the computer network, connection costs, etc.

5. ADDITIONAL PARTICIPANTS IN THE AUTOMATED SERVICES SYSTEM
In the event that additional participants join the automated services system, Riverside shall re-calculate and re-allocate the annual maintenance and license fees assessed to San Bernardino based upon a mutually agreed upon basis by all parties of calculation of the pro-rata share of each additional participant.

6. LENDING POLICY. Each party agrees to lend materials from their respective collections to each other's patrons as requested, and to provide transportation of these materials to a central point for delivery at its own cost.

7. STANDARD OF PERFORMANCE. Each party will perform its duties hereunder in a manner which is consistent with the standards of professional and technical excellence as practiced in library systems in Southern California. In addition, each party will comply with state laws regarding confidentiality with respect to registration and circulation information.

8. MUTUAL HOLD HARMLESS. The parties agree to hold each other, including the other party's elected officials, employees, contractors and agents mutually harmless from any and all claims, demands and liability, including attorney's fees, arising from each party's performance of this Agreement, except to the extent that such liability is caused, in whole or in part, by the negligence of the other party.

9. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and all prior negotiations and dealings pertaining to the subject matter hereof shall be deemed merged herein.

10. AMENDMENT. This Agreement shall not be modified except by written consent of the parties.

11. ADMINISTRATION. Riverside County shall administer this Agreement by and through its Executive Officer or his designee.

12. SEVERABILITY. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

13. TERMINATION. This Agreement may be terminated without cause by either party upon the giving of 270 days written notice to the other party.

In the event there is a failure of either party to comply with a material term of this Agreement, the other party shall provide written notice of the material breach ("Noticing Party"). If the material breach is not corrected by the party receiving notice ("Terminating Party") or if the dispute is not resolved within thirty (30) days of the receipt of the notice, written notice of immediate termination of this Agreement may thereafter be given by the Noticing Party. The

period within which the material breach must be cured may be extended for good cause by mutual agreement between the parties.

- a. The Terminating party shall be responsible for all costs associated with the withdrawal of its own records from the automated services system in the event this Agreement is terminated by reason of material breach.
- b. Upon termination, Riverside County shall determine that portion of the hardware purchased pursuant to the contract with Sirsi, or comparable vendor, which was purchased by San Bernardino County's contribution under this Agreement, and the parties shall enter into negotiations to reach a mutually agreeable disposition of the hardware ownership. Such disposition may include reimbursement by one of the parties to the other, or may include purchase of the interest of one party in the hardware by the other.

14. ASSIGNMENT. Neither this Agreement nor the duties or obligations under this Agreement may be assigned by either party without prior written consent of the other party, such consent not to be unreasonably withheld. Any attempt to assign any duties or obligations under this agreement with the other Party's requisite written consent shall make the attempted assignment immediately void ab initio.

This provision, however, is not intended to prohibit either Party from performing its duties or obligations under this Agreement by way of subcontract.

15. NONDISCRIMINATION. Except as provided in Section 12940 of the California Government Code, no Party to this Agreement shall discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related hereto, marital status, sex or sexual orientation in the selection and retention of employees and subcontractors and during the procurement of materials and equipment. Further,

both Parties agree to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

16. NOTICES. All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted five (5) days after their deposit in the United States Mail, postage prepaid:

San Bernardino County Library
104 West 4th St.
San Bernardino, CA 92415-0035
Attn: County Librarian

Riverside County
4080 Lemon Street, 4th Floor
Riverside, CA 92501-3651
Attn: County Librarian

IN WITNESS WHEREOF, Riverside and San Bernardino have caused this Agreement to be duly executed on this ____ day of _____, 2009.

SAN BERNARDINO COUNTY

RIVERSIDE COUNTY

By: _____
Chair, Board of Supervisors

By: _____
Chair, Board of Supervisors

ATTEST:
Clerk

ATTEST:
Clerk

By: _____
Deputy

By: _____
Deputy

APPROVED AS TO FORM AND CONTENT:
RUTH E. STRINGER
County Counsel

APPROVED AS TO FORM AND CONTENT:
PAMELA J. WALLS
County Counsel

By: _____
Deputy County Counsel

By:  _____
Deputy County Counsel

**MIGRATION TO UNICORN
SOFTWARE LICENSE and HARDWARE SALES AGREEMENT**

THIS LICENSE AGREEMENT ("Agreement"), is established by the Parties: Sirsi Corporation, a Delaware corporation, with corporate offices located at 101 Washington Street SE, Huntsville Alabama 35801-4827 ("SIRSI"); and Riverside County Library System, located at 3392 A Durahart Street, Riverside, CA 92507 ("LIBRARY") who by executing this Agreement shall assume responsibilities and obligations of the consortium administrator, system manager and agent acting on behalf of a Consortium of Public Libraries (listed in SCHEDULE "F - List of Member Libraries") located in the California Counties of Riverside and San Bernardino.

WHEREAS, LIBRARY has previously purchased licenses for various library automation software modules owned by DATA RESEARCH ASSOCIATES, INC., a wholly owned subsidiary of SIRSI ("DRA"); and

WHEREAS, LIBRARY desires and SIRSI is willing to exchange such software licenses for SIRSI's library automation software, as further described herein; and

WHEREAS, SIRSI is authorized to purchase and resell hardware and sublicense software manufactured by others, (hereinafter sometimes referred to as "Manufacturers") and LIBRARY wishes to obtain from SIRSI certain of the Manufacturers' computer hardware and licenses for Third Party Software and SIRSI Licensed Software;

In consideration of the mutual covenants herein, and for other good and valuable consideration, the undersigned parties hereby agree to the following terms and conditions:

1. Definitions.

- a. "Licensed Software" is the applications software modules owned by SIRSI, and licensed to LIBRARY pursuant to the provisions of this Agreement, including computer programs, Documentation, and any subsequent updates provided.
- b. "Central Processor" is the hardware component or "Server Machine(s)" of the system located at the LIBRARY's central site which executes instructions and programs of the operating systems software, Licensed Software and Third Party Software, and that is comprised of one or more central processing units (CPU's).
- c. "Documentation" refers to SIRSI's manuals, handbooks, and user information, regardless of format, relating to the operation and functionality of the Licensed Software and Third Party Software.
- d. "Simultaneous Sessions" refers to the number of simultaneous invocations of the Licensed Software and Third Party Software.
- e. "Third Party Software" refers to software sublicensed and/or distributed by SIRSI, but developed and owned by a third party.

automation software licensed by SIRSI, to the new software licensed by SIRSI known as "UNICORN". The parties agree that except as may be otherwise specified herein, effective thirty (30) days following implementation by LIBRARY of the UNICORN Licensed Software in production mode, all obligations of the parties under prior agreements, including but not limited to the:

- Software License Agreement between DRA and Riverside County, dated June 28, 1983, as amended;
- Agreement for Software Support Update and Maintenance Service, between DRA and Riverside County, dated July 24, 1990, as amended;
- Software License Agreement between DRA and San Bernardino County, dated August 30, 1990, as amended;
- Agreement for Software Support Update and Maintenance Service, between DRA and San Bernardino County, dated August 30, 1990, as amended;
- Software License Agreement between DRA and City of Riverside as amended; and

2. **Migration.** The purpose of this Agreement is to set forth the understandings of the parties concerning the migration by LIBRARY from its current library

▪ Agreement for Software Support Update and Maintenance Service, between DRA and City of Riverside as amended:

shall be deemed completed in their entirety, and superceded by this Agreement. Upon implementation of the UNICORN Licensed Software, LIBRARY shall delete all copies of the former library automation system software licensed by SIRSI from its system, and certify that all copies of such software and related documentation have been destroyed.

3. License. The UNICORN Licensed Software, Third Party Software, and any Documentation itemized in SCHEDULE "A - Software (including Documentation)" herein shall be provided to LIBRARY subject to payment of the license fees listed in SCHEDULE "A" herein, and in accordance with the terms and conditions of this Agreement. The Licensed Software, Third Party Software, and Documentation, including any updates provided, may be duplicated only as provided herein, and with inclusion of all copyright notices. The licenses granted in this Agreement shall continue unless terminated as provided herein.

The rights acquired by LIBRARY hereunder are expressly subject to a non-transferable, non-exclusive, limited license to use the Licensed Software and Third Party Software only as specified in this Agreement. This limited license includes the right to use and modify certain files for LIBRARY's own design purposes, for its use in accordance with the provisions herein. SIRSI is not responsible for any consequences of modifications made by LIBRARY.

LIBRARY acknowledges that no title to or ownership of the Licensed Software or Third Party Software or any modifications thereof is transferred to LIBRARY, and that the Licensed Software and Third Party Software remains the proprietary property of SIRSI or others from whom SIRSI has attained distribution rights, and is protected by federal copyright law. LIBRARY covenants to respect the confidential and trade secret nature of that Licensed Software and Third Party Software, by restricting use and access as described herein. LIBRARY promises not to reverse engineer or otherwise recreate the form of expression or underlying ideas, (collectively "Recreate") contained in any portion of the Licensed Software or Third Party Software. LIBRARY covenants not to suffer or permit others to Recreate the Licensed Software or Third Party Software.

Except as otherwise stated herein, the license fees set forth in SCHEDULE "A" are conditioned upon LIBRARY's use of the Licensed Software and Third Party Software with no more than the number of Titles or Simultaneous Sessions, and at the specific LIBRARY locations and institutions listed in SCHEDULE "A." In the event LIBRARY desires to use the Licensed Software and Third Party Software with more than the licensed number of Titles or Simultaneous Sessions, or locations or institutions, LIBRARY shall provide written notice to SIRSI of such intent. In such event, SIRSI may charge LIBRARY additional license fees.

SIRSI reserves the right to audit use of the Licensed Software for the purpose of verifying compliance with the software license provisions herein. Failure by SIRSI to audit Licensed Software use, or to enforce any provisions herein, shall not be construed as a waiver of such right by SIRSI to enforce such provisions at any time in the future.

U.S. GOVERNMENT RESTRICTED RIGHTS

The Licensed Software, Third Party Software, and Documentation are provided with "RESTRICTED RIGHTS". Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of DFARS 252.227-7013, or FAR 52.227-19, or in FAR 52.227-14 Alt. III, as applicable.

4. Duplication/Nondisclosure/Use. The Licensed Software and Third Party Software (including any subsequent improvements or updates and Documentation, and any parts thereof) may only be used on the Central Processor, and may only be copied, in whole or in part, for use on such Central Processor. In the event that an equipment malfunction occurs in the designated Central Processor, the Licensed Software and Third Party Software (or copies thereof) may be used on another single Central Processor on a temporary basis during such malfunction.

The Licensed Software and Third Party Software for workstations ("Client" software) is licensed for use by LIBRARY on the number of workstations stated in SCHEDULE - "C Designated Equipment" herein for Client licenses. LIBRARY agrees to monitor such software use, and maintain a listing of the workstations on which the Client software is installed. In the event workstations are no longer going to be used by LIBRARY, LIBRARY agrees to delete all

Licensed Software and Third Party Software from such machines.

LIBRARY may not give away, rent, lease, or otherwise sell, sublicense, distribute or transfer the Third Party Software, Licensed Software or any modifications thereto without the prior written consent of SIRSI. LIBRARY understands and agrees that the unauthorized disclosure of the Third Party Software or Licensed Software and any modifications thereto by LIBRARY would irreparably damage SIRSI, and LIBRARY agrees to protect the confidentiality of the Third Party Software and Licensed Software to the same extent it would protect its own property. LIBRARY agrees to exercise diligence in preventing dissemination to unauthorized personnel. LIBRARY agrees to use all reasonable efforts to ensure that its employees and contractors abide by the terms and conditions of this Agreement. LIBRARY shall only use such Licensed Software and Third Party Software to process its own business records.

LIBRARY may not remove any copyright, trademark, or other proprietary notices from the Third Party Software or Licensed Software or the media. LIBRARY agrees to conspicuously display SIRSI's copyright notice on the logon/start-up screen of the Licensed Software. LIBRARY shall use the following notice, or such other reasonable notice as SIRSI shall from time to time require: Copyright © 1980-2001 SIRSI Corporation. All rights reserved.

Except in the event of termination as hereinafter specified, the Licensed Software licenses granted hereunder shall last forever.

5. **Transfer of License.** SIRSI agrees to permit the transfer of the Licensed Software and Third Party Software to a different Central Processor(s) purchased or leased by LIBRARY, provided that LIBRARY shall first obtain the consent of SIRSI. Such Central Processor(s) shall become the only Central Processor(s) licensed to use the Licensed Software and Third Party Software, and LIBRARY shall certify that all copies of the Licensed Software and Third Party Software on the original system have been destroyed.
6. **Manufacturer's Software.** SIRSI and LIBRARY agree that the terms and conditions shipped with Manufacturer's products govern LIBRARY's use of Manufacturer's software sublicensed and/or distributed to LIBRARY by SIRSI.
7. **Operating Environment.** At its expense, LIBRARY shall prepare the site to comply with Manufacturer's site requirements. Manufacturers' requirements shall be furnished to LIBRARY by SIRSI pursuant to this Agreement. Such installation site shall be made available to SIRSI for installation within five (5) business days from the date of delivery of the hardware.
8. **Delivery.** Delivery will be made F.O.B. shipping point, with shipping charges to be paid by LIBRARY, including charges (if any) to place the central site hardware in the desired location for installation. SIRSI will select the carrier and will request inside delivery to the installation site specified in Paragraph 9 herein. Insurance will be provided by Manufacturer or SIRSI on the products while in transit, and the amounts therefor will be reimbursed by LIBRARY.
9. **Installation.** SIRSI will install the central site hardware and software at LIBRARY's site specified below following delivery, in accordance with SCHEDULE "E - Installation Timetable":

**Riverside County Library System
Riverside County Administration Center
4th Floor
4080 Lemon Street
Riverside, CA 92501
Attn: Gary Christmas**

Notwithstanding the foregoing, SIRSI shall not have the obligation to install the equipment:
 - (a) unless the equipment and installation site are made available to SIRSI for installation within five (5) business days from the date of delivery and SIRSI has been so notified; or
 - (b) if the equipment has been modified without SIRSI's written approval and/or subjected to unusual physical or electrical stress, accident, neglect, misuse or other damage beyond the control of SIRSI.
Installation cost shall be in accordance with SCHEDULE "B - Professional Services and Other Services" herein, plus reasonable travel expenses.
10. **Title.** Title to the hardware shall pass to LIBRARY in accordance with Paragraph 8 herein, subject to the security interest granted pursuant to Paragraph 12 below. LIBRARY understands that no title to any software is granted hereunder.

11. **Cancellation/Reschedule Charges.** LIBRARY understands that SIRSI will order the products set forth herein from SIRSI's suppliers in reliance upon LIBRARY's promise to purchase these products under the provisions of this Agreement. In the event LIBRARY cancels any order or portion thereof, or requests a rescheduling and such request is accepted by SIRSI, LIBRARY agrees to pay to SIRSI any cancellation or rescheduling charges imposed upon SIRSI by any of its suppliers resulting therefrom. LIBRARY may not cancel or reschedule any order or portion thereof after shipping.

12. **Payment/Taxes.** Payment to SIRSI by LIBRARY shall be made in accordance with the following schedule:

- Eighty percent (80%) of the software license fees upon Agreement execution.
- Twenty percent (20%) of the software license fees upon use of the Licensed Software with live data.
- One hundred percent (100%) of the Third Party Software license fees, Documentation, installation, conversion, training costs, hardware, additional products and services and reimbursable expenses as billed.

LIBRARY will pay the amounts due hereunder within thirty (30) days of receipt of an invoice therefor. In the event that an undisputed invoice is not paid within thirty (30) days, a finance charge of eighteen percent (18%) per annum will be charged on the unpaid balance.

LIBRARY hereby grants SIRSI a security interest in those products purchased herein for which payments remain due under this Agreement. SIRSI shall not foreclose its security interest so granted as long as LIBRARY is in good faith contesting SIRSI's allegations of default under this Agreement.

Prices are exclusive of all sales, use and like taxes. If applicable, LIBRARY shall certify, and provide appropriate documentation thereof, that it is exempt from all known federal, state or local sales, use or like taxes. Any tax SIRSI may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the LIBRARY and such sums shall be due and payable to SIRSI upon receipt of an invoice therefor. Any personal property taxes levied after delivery shall be paid by LIBRARY.

13. **Training.** SIRSI agrees to provide LIBRARY with the services of qualified personnel for the period of days indicated in SCHEDULE "B - Professional Services and Other Services" herein, to train LIBRARY's staff in the use of the Licensed Software according to mutually-agreeable training plans at the cost stated in SCHEDULE "B." A maximum of ten (10) persons will be trained in a given class.

14. **Additional Products and Services.** LIBRARY agrees to purchase the additional products and services itemized in SCHEDULE "G - Optional Services and Other Services", for the costs stated therein.

15. **Warranties/Maintenance/Support.**

Software. New Licensed Software licenses and new Third Party Software licenses purchased hereunder and listed in SCHEDULE "A - Software (including Documentation)" herein are warranted to perform in accordance with the applicable Documentation for ninety (90) days from installation of LIBRARY's live data thereof. LIBRARY's sole recourse in the event the Licensed Software or Third Party Software does not conform to the applicable Documentation, is repair or replacement of the product, which shall be determined by SIRSI. During the warranty period, SIRSI will provide warranty maintenance, support and phone consultation services in the use of the Licensed Software and Third Party Software in accordance with a valid separately executed Software Support Agreement.

SIRSI will provide maintenance, support and consultation services in the use of the Licensed Software migrated from a previous DRA/SIRSI system, in accordance with a valid separately executed Agreement for Software Support, Maintenance and Update Service.

Hardware. The Hardware listed in SCHEDULE "C - Designated Equipment" is warranted against defects in workmanship and materials for the period specified in SCHEDULE "C" to operate in accordance with the provisions specified in the original equipment manufacturer's documentation. SIRSI's sole responsibility under this Warranty shall be to either repair or replace, at its option, the allegedly defective product.

The above Software and Hardware Warranties are contingent upon proper use of the Software and Hardware and shall not apply if the LIBRARY:

- (a) Modifies the Software or Hardware, or
- (b) Deviates from the Software and/or Hardware operating procedures described in the Software or Hardware Documentation, or
- (c) Violates any of the License, Confidentiality, Payment or any other material provisions hereunder, or
- (d) Has connected equipment or is operating software, not furnished by SIRSI and, which adversely affects the performance of the Software or Hardware, or
- (e) Does not install or load Software or Hardware corrections or releases provided by SIRSI.

THIS PARAGRAPH 15. "Warranties/ Maintenance/ Support", REPRESENTS SIRSI'S ENTIRE OBLIGATION FOR WARRANTING THE SOFTWARE AND HARDWARE AND RELATED DELIVERABLES. SIRSI DISCLAIMS, TO THE EXTENT PERMITTED BY LAW IN THE APPROPRIATE JURISDICTION, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS OF PURPOSE.

16. **LIBRARY Representations.** LIBRARY is furnishing the hardware on which the Licensed Software and Third Party Software will be used. LIBRARY represents that its operations staff is competent and fully trained in the operation of the hardware and its operating system software.

LIBRARY shall provide SIRSI with access to LIBRARY personnel and equipment during normal business hours for the purpose of performing services under this Agreement. This access shall include the ability upon request by SIRSI, to access the server(s) on which the Licensed Software is operated via ftp and telnet.

17. **Testing.** LIBRARY is responsible for performance of any tests it deems necessary prior to use of the Licensed Software with any live data.
18. **Copyright/Right to Grant License.** The Licensed Software and Third Party Software is protected by copyright and trademark laws and international treaties. Title, ownership rights, and intellectual property rights in the Licensed Software and Third

Party Software remain in SIRSI and/or its suppliers. Use of the Licensed Software, Third Party Software, and associated Documentation is subject to the applicable copyright laws and the express rights and restrictions of this Agreement. Any rights not expressly granted herein are reserved. SIRSI hereby warrants that at the time of delivery of the Licensed Software and Third Party Software, it has the right to grant the license(s) hereunder.

19. **Patent/Copyright Infringement Indemnity.** If notified promptly in writing of any actions (and all prior claims relating to such action) which may be brought against LIBRARY based on a claim that LIBRARY's use of the Licensed Software infringes a United States patent or copyright, SIRSI will defend such action at its expense, provided that SIRSI shall have sole control of the investigation, defense and settlement of any such action.

20. **Termination/Return of Licensed Software.** Either party shall have the right to terminate this Agreement if the other party:

- (a) Assigns this Agreement or any of its rights hereunder without obtaining the prior written consent of the other party;
- (b) Neglects or fails to perform or observe any of its existing or future obligations under this Agreement;
- (c) Makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or party of its property; and/or
- (d) Is adjudged as bankrupt;

and any of the above condition(s) is not remedied within thirty (30) days after written notice thereof has been given to the other party.

In the event of cancellation as set forth above which is not due to the breach or violations of SIRSI, LIBRARY shall pay SIRSI for the services rendered by SIRSI's employees as of the effective date of cancellation and/or termination based on the then prevailing hourly billing rates for such SIRSI employees.

LIBRARY shall also reimburse SIRSI for its out-of-pocket expenses, such as supplies and travel. LIBRARY agrees to immediately return to SIRSI all copies of all proprietary materials, including, but not

limited to the Licensed Software, Third Party Software and Documentation.

In the event of cancellation or termination for cause by either LIBRARY or SIRSI, any Licensed Software and Third Party Software licenses granted shall terminate, and the rights, obligations and liabilities of each party shall cease. If LIBRARY refuses to so return the same, SIRSI shall have the right to pursue all legal and equitable remedies available, including but not limited to repossession of the software. LIBRARY's intentional interference with SIRSI's ability to exercise its rights hereunder shall subject LIBRARY to such costs as may be incurred in SIRSI's enforcement of such rights, including but not limited to, reasonable attorneys' fees and court costs.

21. **Limitation of Liability.** RIGHT TO RECOVER DAMAGES TO PROPERTY CAUSED BY SIRSI'S FAULT OR NEGLIGENCE SHALL BE LIMITED TO: (i) THE AMOUNT PAID BY LIBRARY FOR THE PRODUCTS PURCHASED PURSUANT TO THIS AGREEMENT AND ANY SUBSEQUENT PRODUCTS DELIVERED BY SIRSI TO LIBRARY PURSUANT TO AN ADDENDUM MADE A PART OF THIS AGREEMENT; OR, (ii) ONE MILLION DOLLARS (\$1000,000) WHICHEVER IS LESS. SIRSI WILL NOT BE LIABLE IN ANY EVENT FOR DAMAGES RESULTING FROM LOSS OF DATA, LOSS OF PROFITS, LOSS OF USE OF PRODUCTS, OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS LIMITATION WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. ANY ACTION AGAINST SIRSI MUST BE BROUGHT WITHIN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ARISES.

22. **Ownership of Library Data.** All bibliographic, item, fine, patron, and other records entered into the database of LIBRARY or supplied to SIRSI by LIBRARY are and shall remain the sole property of LIBRARY. SIRSI shall not without LIBRARY's written consent, copy or use such records except to carry out contracted work and will not transfer such records to any other party not involved in the performance of this Agreement, and will return submitted records to LIBRARY upon completion of the work hereunder. LIBRARY shall have the right, without the consent of SIRSI, to extract such data in

industry-standard formats, and at no cost to LIBRARY. LIBRARY acknowledges that the storage compilation, format and layout constitute proprietary and trade secret information of SIRSI and are protected by federal copyright law. SIRSI agrees to assist LIBRARY, if requested, in making such extracts, subject to reasonable compensation therefor.

23. **Notices.** Any notices hereunder shall be in writing and delivered in person, by facsimile, overnight express or by registered or certified mail, return receipt requested, with proper postage prepaid, properly addressed as set forth below. Notice shall be effective upon delivery. Facsimile notices shall also be delivered by U.S. mail, postage prepaid, or another means listed above, but shall still be effective upon facsimile transmission.

FOR SIRSI:
SIRSI Corporation
101 Washington Street SE
Huntsville, Alabama 35801-4827
Attn: Finance and Administration/Contracts

FAX: (256) 704-7007

FOR LIBRARY:
Riverside County Library System
Riverside County Administration Center
4th Floor
4080 Lemon Street
Riverside, CA 92501
Attn: Gary Christmas

FAX: 909-955-1105

24. **Governing Law.** This Agreement is governed by and is to be construed in the United States, under the laws of the state of the principal place of business of LIBRARY. In the event that LIBRARY is located outside of the United States, this Agreement shall be construed in accordance with the laws of the State of Alabama. Any legal action related to the performance or interpretation of this agreement shall be filed only in the Superior Court for the State of California or the US District Court located in Riverside California. Prior to the filing of any legal action, the parties shall be obligated to attend a mediation session before a neutral third party for material breaches other than a violation by LIBRARY of any of the provisions of Clauses 3. "License", 4. "Duplication/Nondisclosure/Use", and/or 5. "Transfer of License" herein. In the

event of a violation of Clauses 3, 4, and/or 5, SIRSI (at their sole option) may seek immediate legal action to secure all rights provided herein and including, if appropriate, injunctive relief.

24. **Force Majeure.** SIRSI shall not be liable for any damages resulting from any delay in delivery or failure to give notice of delay which directly or indirectly results from the elements, acts of God, delays in transportation, delays in delivery by SIRSI's vendors, commercial impracticability, or any other cause beyond the reasonable control of SIRSI. The delivery schedule shall be extended by a period of time equal to the time lost because of any such delay. SIRSI shall not be liable for damages resulting from delays by LIBRARY.
25. **Waivers.** No waiver of right, obligation, or default shall be implied, but must be in writing, signed by the party against whom the waiver is sought to be enforced. One or more waivers of any right, obligation, or default shall not be construed as a waiver of any subsequent right, obligation, or default.
26. **Severability.** If any provision of this Agreement is determined to be unenforceable or invalid, the remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.
27. **Press Releases.** SIRSI shall have the right to include LIBRARY's name in its published list of customers, without prior approval of LIBRARY. With regard to other publicity matters wherein LIBRARY's name is mentioned in relation to products or services furnished by SIRSI, SIRSI agrees to submit to LIBRARY for approval all such proposed advertising, sales promotion or other copy, and to refrain from publishing or using any such publicity without LIBRARY's prior written consent, which consent shall not be unreasonably withheld. SIRSI further agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the products or services provided hereunder are endorsed or preferred by LIBRARY, unless LIBRARY agrees otherwise in writing.
29. **Non-SIRSI Software and Hardware.** LIBRARY shall have the right to install on the system additional software and/or hardware which has not been licensed, sublicensed, distributed or sold by SIRSI to LIBRARY. However, SIRSI shall have no responsibility for maintenance or support of software or hardware not provided by SIRSI, or for any adverse affects resulting from use or interaction of such products with SIRSI products. SIRSI shall incur no additional expense as a result of LIBRARY's use of such products.
30. **Year 2000 Certification.** SIRSI hereby certifies that the SIRSI Licensed Software is Year 2000 Compliant as defined herein, when configured and used in accordance with the current related Documentation, provided that all other products (the underlying operating system, other software, firmware and hardware) used with the SIRSI Licensed Software are also Year 2000 Compliant. A product defined as being Year 2000 Compliant will produce the same results prior to the year 2000 and after the year 2000. Any Year 2000 Compliant product will handle leap years correctly, and will utilize non-ambiguous representation, handling and interpretation of centuries represented by two digits if such representation is allowed by the product.
31. **Entire Agreement.** This Agreement is the result of negotiation of the parties and has been agreed to after careful negotiation and discussion. This Agreement constitutes the entire agreement between the parties and supersedes all previous communications and representations or agreements, either written or oral, with respect to the subject matter hereof; and no modification hereof shall be binding on either party unless acknowledged in writing by the duly authorized representative of either party. In the event of a conflict between the terms of this Agreement, and the terms of any Purchase Order issued by LIBRARY, the provisions of this Agreement shall control.

SIRSI reserves the right, without prior consent of LIBRARY, to issue any comments or corrections to any press release in which SIRSI is mentioned in conjunction with this agreement or any services performed pursuant hereto.

In witness whereof, the Parties have executed this Agreement to be effective on the 4, day of May 2004:

SIRSI:

RIVERSIDE COUNTY

By: David A. Willey By: Roy Wilson
Chair, Board of Supervisors
ROY WILSON

ATTEST:
Nancy Romero, Clerk

By: [Signature]
Deputy

APPROVED AS TO FORM AND CONTENT:
WILLIAM C. KATZENSTEIN, County Counsel

FORM APPROVED
COUNTY COUNSEL

By: [Signature] APR 26 2004
Deputy County Counsel

LSSI:

By: [Signature]
Gordon Conable, Vice President