

SAVE OUR ESCONDIDO LIBRARY COALITION

October 12, 2017

Mayor Sam Abed and City Councilmembers
Escondido City Hall
201 N. Broadway
Escondido, CA 92025

Via Email

RE: Save our Escondido Library Coalition comments and opposition to LS&S Contract

Dear Mayor and Councilmembers,

Thank you for making this contract available for review in advance of the hearing. Although we heard Mr. Abed call it 'excellent', it is not. In fact, this contract, specific only in a few areas such as hours open and dress code, is overly vague in areas that need to be measurable and that have any meaning in people's lives. If executed, it will not improve our library, it will decimate it.

We object to and oppose this contract in the strongest possible terms.

Although Mayor Abed promised an excellent and highly accountable contract with LS&S that he would be willing and able to break in a year, we offer a few comments below detailing how vague, non-specific, inappropriate, non-transparent, and far-from-excellent this contract is. It does not serve the interests of the public.

The very foundation of the proposed contracted is flawed. There is insufficient clarity or specificity as to what services and programs the library is to provide to the library users, the quality that is required, or how the City intends to assess the success to which the contractor has provided those services. As proposed, defining what the Escondido library is expected to provide and how well it is being done is largely left to the contractor. **Crucially, city must revise the clauses related to terminating the contract to make sure the City really can get out of the contract in a timely manner if equal, complete, and quality services are not provided or other conditions change.**

As we read it, this contract results in this process, 1. the public gives the corporation a budget and a lot of money and 2. LS&S determines (in secret) how much of that they would like to keep as profit, and then finds services to provide that will consume the difference.

This guarantees LS&S will make whatever revenue they choose and then provide programs (of indeterminate value and quality) with the balance. We do not see that the contract places enough specific performance requirements on LS&S to ensure no loss of quality over what we enjoy with our city librarians today. The 'same or better quality' was the promise after all.

Worse, if there are special programs and services wanted by the public, it appears the Library Board of Trustees must perform those functions on the city's dime.

A normal contract process should be set up as follows:

- A. City sets the goals and objectives (where are these?) with an associated budget annually;
- B. The contractor responds with a plan to meet those objectives within budget;
- C. A negotiation ensues and agreement is reached; and then,
- D. The library board assesses (with community involvement) the value of the programs offered and the success with which they were implemented. Based on this review, a decision is made regarding continuing or escaping the contract.

This type of planning, execution, and feedback loop is necessary because if the contractor can't deliver what we need, we need to be able to justify escaping the contract due to poor performance. This should be an annual process, driven by the library board in a public forum. Instead, this contract requires LS&S to do little that makes the library serve the public at a high level of quality and doesn't provide an escape for poor performance, just for a breach of contract, which will be virtually impossible to prove.

We strongly urge the Mayor and Council NOT to approve this or any other contract with LS&S.

Other specific deficiencies in the draft contract include, but are not limited to the following.

1. Lack of ability to terminate the contract.

One of the most serious problems is in the termination language. We have heard it stated in public by several of you that the contract can be ended in a matter of a few weeks if the Council desires. The statement is misleading and a significant mis-reading of the *Section 11 Termination* clause. Any termination is contingent on 'material breach' **after** a failure to cure. This will be virtually impossible to prove or implement due to the loose, non-specific, and corporate driven nature of the 'requirements'.

2. Contract performance is not measurable, too vague on programs and staff professionalism

In general, measurable performance standards/metrics have not been established, other than operating hours. For example, while the contract commits to some number (vague and indiscernible) of book clubs there are no specifics. Who will run this program? A professional with an education or MLS degree? An untrained volunteer? Or a minimum-wage, hourly worker with little experience? In which languages? What programs will be done in conjunction with schools, museums, other entities? There are no performance standards for any of this. This is just one example of many problems around performance in the contract. Without these, how will performance be measured and evaluated?

Other weaknesses include:

- a. There is no stated requirement for Spanish-speaking staff and the contract should include a requirement that a Spanish-speaking staff person is in the library during all open hours.
- b. The contract does not specify who will be in the building when the library is open. There needs to be IT, professional librarian, multi-lingual experts, adult and youth learning experts.
- c. The city should demand more than just three MLS staff. And, even these are only 'desired' not required.
- d. List the exact programs that we have now and require that those be the minimum commitment. Any changes to those programs should be required to be considered in the public forum at a public meeting.

3. Spanish-speaking staff must be required.

Our community is over 50% Latino. Areas of our city exceed 30% linguistic isolation and some are in the 97th percentile of the state. A commitment to Spanish-speaking staff must be added in the contract. They must be required to be paid extra for this special and necessary skill, and programs specifically around language and culture for Latino families must be required. We already know LS&S is deficient in this area of performance so the Council should protect our residents in this regard.

4. Fails to require implementation and performance of current library strategic priorities.

As mentioned above, the City should set our priorities and requirements, not allow LS&S to come up with their own based on how much money **they** want to spend on our library and educating our children. We read that LS&S will take six months to develop their own, new strategic plan that will be 'approved' by the Trustees and the City (please see need for definitions below). But, what if we don't approve it because it isn't the kind of quality plan we want and deserve? To protect the public the contract should include an additional termination clause if a Strategic Plan, within budget, is not agreed to.

5. Contract term is too long.

The city has misrepresented to us what the contract term would be. You said 5 years. The contract is now for 10 years. This is far too long. We understand many (most?) city contracts are for three years or less). The contract term should be no more than three years and any extensions specifically require public hearing.

Further, we learned from Mr. Abed's Town Hall that the city is planning to pursue a library bond in 2018. The costs associated with LS&S assisting with that must be included in this contract. If they are allowed to be additional, we are certain the projected minimum \$400,000 savings will be lost in this one effort alone.

Also, there should be a re-opener clause for operations of any new library or additional branch library. We can be certain there will be significant changes over the next 10 years in how the library needs to be operated.

6. Contract does not list the open hours for the Pioneer Room or commit to staffing of it.

7. Contract does not list # of rooms or hours available for community meetings or the fees associated with it.

There is a serious lack of community meeting space in Escondido. The library is one key location that is heavily used.

8. Contract needs definitions to improve clarity and implementability.

- a. As odd as it might sound, *CITY* needs to be better defined. There are three levels of city engagement that could all be construed to be the 'city' but which carry very different impacts on the library and the public. City manager or staff only approval, closed session Council consideration, or formal vote in a public meeting where public input is required to be heard. As the contract reads now, there is only one stated public hearing on the annual survey of residents. (4.c.) For example, in Section 21, it is unclear if approval of subcontractors allows a staff only approval or requires a Council approval through a public hearing.
- b. *'Appropriate and generally accepted professional standards of practice...'* needs a definition and a minimum standard. The city should specify that the standards to be met should be the ALA practices or better. e.g. Attachment A. B. 1. A. This matters a lot since, at least in Jackson County, LS&S met only 11% of essential specifications in the staff category and library operations failed to meet 63% of the minimum 'essential specifications' for overall performance.
- c. Define *"Library Service Industry"*. Since they are the only company in this 'industry' we have no idea what the heck 17. C. means when it says *"LS&S warrants that it will perform ...with at least the care, diligence, and expertise generally accepted in the library service industry."* (emphasis added) This is even more concerning given that LS&S has their own, secret *"proprietary library management techniques"* (15.A.) What are those and, more importantly, who generally accepts them if no one can know what they are?
- d. *'Bilingual'* must be defined. We assume it means English-Spanish but it does not require that.
- e. *'Management'* needs to be defined and clarified. It says in Section 9 and Attachment A, C.8 that the Library Board will manage the library. Really? Please explain. Since we don't seem to have agreement with city staff on what *'shall'* means, this needs to be defined as well.
- f. *"...related documentation"* listed at the end of Section 15 must be defined and narrowly restricted. As written, this could be anything.
- g. *"approved"* Please define if this means approval will occur in a public meeting or by staff or in closed session. E.g. A. Scope of Services, page 1 of 25, related to the Strategic plan. What happened if the City and the Library Board don't both approve it as stated here?
- h. Define 'regular' (Programming 9.c). How often is 'regularly'?
- i. *"Monthly book clubs for children, teens, and adults..."* is that once a month or three separate monthly sessions, at high quality for various ages separately, and in how many different languages? See same comment for other minimum programs listed in this area.

9. Section 10.

Last sentence should read “LS&S agrees that it **shall** (strike ‘may’) satisfy all obligations under this agreement without reliance on volunteers”, since this may be the situation they will be in.

10. The contract does not codify what was represented to the public about our current library staff.

It was represented in a public meeting that the current staff would receive offers ‘comparable’ to what they are receiving now. Such a requirement is not in this contract. Rather, 5.B states clearly offers ‘will be on different terms’ and those terms are completely undefined. The wage, salary, and benefits should all be disclosed since these employees are paid with public funds.

11. Do not let the outsourcer outsource.

The city should not allow them to outsource this contract. That only makes this entire situation ever more untenable and the city less able to extricate itself from it.

12. Right to Audit must include ‘Proprietary information.’

LS&S already has a notorious reputation for using ‘proprietary’ information to hide profits and use of tax-payer dollars. As the Jackson County audit reported, 28% of the funds given to LS&S fall into a category of ‘other’ and the exact use is not known, the lack of transparency makes it “impossible for the Board to determine if it is getting good value for the dollar”, and, LS&S’s definition of proprietary information is extremely limiting and frustrates the ability of the Board to certify that standards are being met.

13. Contract should include re-opener clauses

In addition to those mentioned elsewhere in the letter, re-opener clauses should be added to re-open contract in the event of any new elected officials joining the Council due to election or otherwise during the period of the contract or in the event a proposition or referendum is passed making any changes in policy, operations, or funding of the library.

14. Level of profits should be disclosed to the public each year so the use of our tax-dollars can be known.

15. Savings are not a condition in the contract.

Nowhere in the contract does it require savings to the city of, at least \$400,000 a year plus ‘millions of dollars in pension costs’ which is the alleged reason for entering into this contract. The city needs to come clean with the ‘estimated’ pension savings prior to signing. Then, these savings must be documented as a performance condition in the contract. A close review of the numbers thus far demonstrate that a \$400,000 savings is unlikely.

16. Campaign contributions should be prohibited from family members as well.

We appreciate Section 8 that prohibits campaign donations from officer, employees or agents. However, to be meaningful this must extend to and include Argosy Capital operatives, subcontractors to LS&S, and family members. Escondido has very high maximum campaign donation limits (some of the highest in the state) and we have seen a pattern where spouses and children give high donations to campaigns. At \$4,100 per

election this can easily build up to a significant, and inappropriately influencing level of campaign support.

17. Changes in payment and scope of services must be required to be done in public forum.

Section 6 states that these must be requested in writing but is silent on how the decision is made. The public needs to be able to participate in any such requests.

18. Section 15 A. financial relief needs to be capped.

There is no financial cap on the question of confidential information. We already know that LS&S is secretive and touchy about their materials. Do not let the city be on the hook for an unlimited claim.

19. Annual review of contract performance must occur in public.

In section 12.c. *Planning and performance monitoring* it does not clearly specify this will be done in the public forum. It should.

20. Funding not clear.

What is the relationship to the 'Base Budget' and the lump sum amount listed in E.1? Is there no disclosure of what LS&S will spend over \$2 million tax-dollars on? Or, are they required to spend at least the amounts in the 'base budget'? If so, how is money saved? Further, there should be a provision for assessing liquidated damages as a penalty for not meeting the performances metrics (if and when we get some).

21. The 'non-solicitation' must be extended to current high level city employees also.

The contract disallows the city to hire a former LS&S employee for a year (Section 24) However, (other than current library staff that may be forced to downgrade their employment to work for LS&S) any non-librarian current city employee (such as a city manager, manager, or other high level staff) should also be **prohibited** from working for LS&S.

The results of adoption of this contract are demonstrated in a pointed metaphor offered by one of our members highly experienced in outsourcing contracts.

"It's as if you contracted for me to feed your children because I said that I could do it cheaper than you. Then, after charging 20% less than you used to spend, I fed them nothing but boiled cabbage. If you objected, I would say "we just agreed that I would feed them" and you can't do anything about it for 10 years. That is all that we are requiring LSS to do - just "run the library" (whatever that means) for less than we do.

In not specifying any performance criteria beyond a few quantitative measures (maintaining library usage at the proportion of the population as it is now, or growing it by 5% annually) and defining what library usage is (x books checked out, Y delinquencies, Z number of Wi-Fi hours used by N number of discrete users), there are few commitments to qualitative standards or performance standards of the operator.

Otherwise, as written, they don't have to make anything better (or even maintain current standards) and we can't change it for 10 years!"

That is the very situation that signing this contract with LS&S would put us in. Excellent libraries are more than this. So much more.

This contract, it is not only far from "excellent", it is a disaster. It will not make our library better. It all but guarantees a worse library with less qualified staff than we have now and for up to 20 years. We don't want their 'boiled cabbage'.

We request you vote no on this contract.

Sincerely,

Members of the Save our Escondido Library Coalition

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cc. City Attorney, Mike McGuinness