

Save Our Escondido Library Coalition

Committed to restoring the Escondido public library system to public control.

January 8, 2019

Mayor and City Council
City of Escondido
Via Email

RE: Concerns related to LS&S contract and recommendations for moving forward on the library issue.

Dear Mayor and Council Members,

This is our second letter in a series outlining the serious problems with the LS&S contract and providing evidence to the new Council for your consideration prior to any effort to appropriate funds for the next fiscal year. We believe the Council will be asked to make budget decisions that will either prolong this problem or move to correct it. In this letter we wish to outline our concerns about the many problems with the current LS&S Services Contract as adopted.

SOEL outlined many deficiencies in the contract prior to adoption in our October 12, 2017 letter. However, the Mayor and Council at that time went ahead and adopted the contract. It is now time for consideration of the annual appropriation for the contract. Because the agreement continues with the many problems still present, we urge you to withhold appropriation and end it. No matter what course of action the Council decides to pursue related to the library, the problems with the contract are so severe that it should be ended and a new one, better for the public interest, be negotiated.¹

For the reasons detailed below, we respectfully request the City withhold funding allocation in the next budget and conduct a thorough independent analysis of the expenses, contract, and performance of LS&S prior to making any decision about future direction. We further request the Council to establish a Library Ad-Hoc committee, with open meetings, to make recommendations for a plan for the library going forward.

We have listed just a few, the worst of the worst, problems with the Contract below.

1. The Contract guarantees automatic increase no matter what level of performance of the contractor.

The city should have learned its lesson with the JC Resorts contract for services at the golf course. Although that contractor continually fails to meet its obligations within the funds appropriated (requiring the public to backfill the company over \$5 million to date)², they are entitled to a contractual 3-4% increase each year.³ This is just bad business and no reasonable company would ever sign a contract with automatic increases independent of performance.

¹ This request is notwithstanding our belief and support of the legal challenge that the Library Trustees are mandated by state law to manage the public library.

² *Escondido Taxpayers Subsidize JC Resorts' Poor Performance for City Gold Course*, Unite HERE, October 2018, Figure 1

³ Escondido City Council Meeting Agenda, June 27, 2012. Agenda Item No. 17. Management and Concession contract for Reidy Creek Golf Course. Golf Course Consulting and Management Agreement. Paragraph 6.1: *"In addition to the Periodic*

Sadly, the same is true for the library services contract. Section E.1. provides for between 2.8 -3.0% increases each year of the contract while leaving the minimum for library materials a stagnant \$250,000. The result is that the public pays more and more and less and less is provided as a minimum of materials.

Further, LS&S gets to select the materials vendors and will receive a 5% 'materials handling' fee, resulting in even less of the public funds going toward materials. Because the City has committed to giving LS&S a 2.8-3.2% increase **each year**, at some point this 3% increase, in addition to the increases for other library operations, will total more than any of the above city-run budgeted years.⁴

Lest anyone suggest that this is due to the cost of personnel, please know that one of the complaints against LS&S in Jackson County was that during the 10-year period the contract costs rose 38% while personnel costs rose only 17-19%. An excerpt from the reporting below,

(Trustee) Turner said the LS&S contract will cost \$4.4 million next fiscal year, 38 percent more than the contract cost in 2008, factoring in increased hours and services. But those workers making minimum wage have seen their earnings rise only 19.2 percent (from \$8.18 an hour to \$9.75), and those with master's degrees in library science have seen increases totaling 16.98 percent (from \$22.50 an hour to \$26.32).⁵

We hope that the council is as shocked as we are to read that it appears LS&S was paying people under \$10 an hour to work in a library.

2. The Escondido Library Services Contract fails to meet standards found in other LSS contracts.

By letter on October 16, 2017, SOEL requested that the Council review the other contracts in California that LS&S has signed and require the same termination clauses in our contract as LS&S has agreed to elsewhere. This should have been done so that our contract is **at least** as protective of the public interest. Also, as to length of term, it is clear LS&S will accept a year by year agreement or 5-year agreement. It was unnecessary for the previous Council to lock the city into a 10-year contract and there is no reason for the new Mayor and Council to retain that contract length.

City of Camarillo:

*"Section 19. Termination of Agreement 19.1 Either party may terminate this Agreement, **with or without cause**, at any time by giving at least six months prior written notice of termination to the other party."⁶*

City of Moorpark:

*"1. Term. **The term of this Agreement shall be from July 1, 2016 to completion to June 30, 2017** in conformance with Exhibit B, unless this agreement is terminated or suspended pursuant to this Agreement. City may extend the term of this Agreement, subject to Termination as stated in Section 6, on the same terms and conditions as in effect just before the then-current end of the*

Fixed Fee, a 'Percentage Fee' equal to zero and 75/100 percent (0.75%) of Gross Revenues..." and Page 1: "The proposed new contract keeps the management fee at the FY/12 rate for the first two years, followed by a 4% increase for the next three years and a 3% increase for the remaining five years." As cited in Escondido Taxpayers Subsidize JC Resorts' Poor Performance for City Gold Course, Unite HERE, October 2018

⁴ See Attachment 1 to this letter, *Fact Sheet on Library Budget*

⁵ <http://mailtribune.com/news/top-stories/library-wants-out-of-contract>

⁶ <http://www.cityofcamarillo.org/City%20Clerk/Agenda%20Packets%20-%20older/11-18-15%20Agenda%20Packet.pdf>

term, for up to four (4) successive periods of one (1) year each by providing written notice to Consultant no later than 120 days before the then-current end of term. If all of these extensions are exercised, the Agreement will end of June 30, 2021."

*"6. Termination or Suspension without Cause. **Either Party may terminate this Agreement with or without cause** by giving the other Party six (6) calendar months written notice of termination."*⁷

City of Santa Clarita:

Although Santa Clarita has ended the LS&S contract in January, 2108, it is still instructive to consider what the company committed to in it.

"8. TERM. The initial term of this Agreement will be from July 1, 2016 (the "Effective Date") to June 30, 2017. The City Manager may extend the term of this Agreement, subject to Termination as stated in Section 15, on the same terms and conditions as in effect just before the then-current end of the term, for up to four (4) successive periods of one (1) year each by providing written notice to CONSULTANT no later than 120 days before the then-current end of the term. If all of these extensions are exercised, the Agreement will end on June 30, 2021."

*"15. TERMINATION. Notwithstanding Section 8 of this Agreement: A. CITY may terminate this Agreement with cause at any time after CONSULTANT fails to cure such cause upon thirty (30) days prior written notice. **Either Party may terminate this Agreement without cause** with one hundred eighty (180) days written notice prior to end of CITY's fiscal year."*⁸

Any contract the city signs should be terminable 'with or without cause' and to a year-to-year term. The failure to do this puts our city at risk.

3. Financial exposure of the city is not capped per Section 15 A

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

4. Contract should include re-opener clauses

For the protection of the public and because of the extreme length of the contract, the contract should include re-opener clauses to respond to any new or significant changes or event. In our October 16, 2017 letter we listed a few of these significant conditions, such as *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*. Since this has and can still occur, a re-opener clause is called for.

5. Contract should expand right-to-audit, require disclosure of profits, and commit to a savings for the city of, at least the promised, \$400,000.

The contract does not require adequate disclosure or reporting as to how funds are used. For example, the 'Right to Audit' should 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'⁹ and the exact use is not

⁷ http://moorpark.granicus.com/MetaViewer.php?view_id=84&clip_id=1736&meta_id=147128

⁸ <http://santaclaritacityca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=2287&highlightTerms=Issi>

⁹ https://www.escondidoindivisible.com/wp-content/uploads/2018/01/JCLS-Performance-Review_Quality-Assessment.pdf, p, 23

known, the lack of transparency makes it “*impossible for the Board to determine if it is getting good value for the dollar*”,¹⁰ and, LS&S’s definition of proprietary information is extremely limiting and frustrates the ability of the public to certify that standards are being met.

Further, the public has a right to know how much of the public funds are directed to profit for the hedge fund owner of LS&S.

Last, since the entire premise of out-sourcing this contract was to save \$400,000 a year¹¹ such a savings should be required in the contract and the appropriate analysis done to confirm the savings.

This contract is not, and never was, in the public’s best interest. It is a contract that meets the needs of the contractor but not the public. It should never have been adopted. We hope the new Council will look hard at this and correct this situation.

We urge the Council to be thorough, thoughtful and data-driven about this important decision. To do that will require an independent analysis of this contract to date. As part of your decision-making process, we strongly urge the Council to conduct a thorough, independent analysis of performance and expenditures to date.

In addition, in recognition of the improper and incomplete way the original decision was made, it is only reasonable that this contract be reconsidered and everything from real costs to quality of staff and services be evaluated. In addition, in recognition of the commitment to wise-use of tax-payer funds, we request that an independent audit of the funds spent, and pocketed, by LS&S be done and results disclosed to the Council and public.

Finally, it is interesting to note that Santa Clarita found that they expect to save \$400,000 in the first full year of operations once again under city control.¹²

6. We believe that ending the contract without penalty fees is allowed for in the contract.

In our reading of paragraph 11.C.¹³ of the Agreement, we believe the Council can exit the contract agreement as follows without penalties.:

“In the event that funds for the following CITY fiscal year are not appropriated for the Library, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriate. The CITY shall immediately notify LS&S in writing of any such non-allocation of funds.”¹⁴

Although they had a far superior contract conditions, last year Santa Clarita ended the contract with 180-day notice in January of 2018¹⁵ and transitioned the library back to public control that July.¹⁶

¹⁰ Ibid, p. 23

¹¹ Escondido Resolution 2017-139

¹² <https://signalscv.com/2018/01/council-unanimously-votes-take-back-library-operations/>

¹³ SOEL believes there is a significant technical error in the signed contract. In paragraph 3 B- it implies that the termination provisions are in “Paragraph 13”. However, 13 is related to City Property. Paragraph 11 is the language on termination. This should be fixed.

¹⁴ Agreement, paragraph 11. C., page 4

¹⁵ <https://signalscv.com/2018/01/council-unanimously-votes-take-back-library-operations/>

¹⁶ <https://www.santa-clarita.com/Home/Components/News/News/7473/1230>

For these reasons, we request that the City withhold funding allocation for this contract and notify LS&S that this contract will be ended as of June 30, 2019, conduct a thorough analysis of the expenditures and performance prior to determining a course forward. Further, we further urge the Council to designate and task an Ad-Hoc committee to develop a transition plan back to public control on July 1, 2019.

Thank you for consideration of these issues.

Sincerely,
Brenda Townsend and Christine Nava
For the Save our Escondido Library Coalition

cc. Library Board of Trustees

Attach: Library Budget Fact Sheet 2011-2012 through 2018-2019

ATTACHMENT 1
Fact Sheet
Escondido Public Library Annual Budgets

As can be seen from this seven-year analysis, the library budget has increased and decreased depending on circumstances. However, due to the automatic, guaranteed 3% increase the City has committed to giving LS&S a 2.8-3.2% increase **each year**, this will equal more than was funded for the library each budget year. At some point, this 3% increase, in addition to the increases for other library operations, will total more than any of the above budgeted years. The numbers on the left are the actuals spent by the department and those in blue represent the funds originally allocated for that year expenses.

2011/2012: \$3,220,130—2012/2013: **\$3,149,460** = (\$ 70,670) = 3% decrease

2012/2013: \$3,260,110—2013/2014: **\$3,525,625** = \$265,515 = 8% increase

2013/2014: \$3,525,625—2014/2015: **\$3,523,725** = (\$ 1,900) = 1% decrease

2014/2015: \$3,448,827—2015/2016: **\$3,679,355** = \$230,528 = 7% increase

2015/2016: \$3,473,107—2016/2017: **\$3,637,465** = \$164,358 = 6% increase

2016/2017: \$3,637,465—2017/2018: **\$3,670,055** = \$ 32,590 = 1% increase

2017/2018: \$3,692,570—2018/2019: **\$3,315,360*** = (\$377,210) = 11% decrease

* Includes \$2,545,000 for Professional Services/Contracts/LS&S and \$770,360 for other library operations expenses.

* LS&S officially assumed the EPL takeover in January 2018.

* The City has committed to giving LS&S a 2.8-3.2% increase **each year**, which will equal more than it gave the Library each budget year. At some point, this 3% increase, in addition to the increases for other library operations, will total more than any of the above budgeted years. See Attachment A to agreement, E.1.

* It is important to note that if the City were to hire new staff should the contract with LS&S be terminated, the costs for the new staff would not be as expensive as they were previously. The reason for this is that the new staff would not be hired at the 3% pension that many of the original staff were benefitted. In fact, it is viable to venture that the cost of paying PERS for new staff would be less than the \$400,000 that the City claims it is saving with LS&S. This information is found in the Library's Annual Budget pages. See the Santa Clarita Agenda report, p.2 regarding how that city saved funds by due to the new pension rule.¹⁷

* The number related to LS&S does not include any of the additional funds we expect them to request based on the Strategic Plan they proposed and their practice elsewhere.

¹⁷ <https://www.escondidoindivisible.com/wp-admin/upload.php?item=3218>