

AGREEMENT FOR COLLECTIONS SERVICES BETWEEN THE RAPID CITY PUBLIC LIBRARY BOARD AND UNIQUE MANAGEMENT SERVICES, INC.

This Agreement is made by and between the City of Rapid City, by and through the Rapid City Public Library Board, of 610 Quincy Street, Rapid City, SD 57701 (“RCPL”) and Unique Management Services, Inc., a Kentucky corporation, of 119 E. Maple St., Jeffersonville, IN 47130 (“UMS”).

WHEREAS, the RCPL issued a Request for Proposals (“RFP”) requesting interested parties provide proposals for collection services; and

WHEREAS, UMS submitted the successful proposal for collections services;

WHEREAS, the RFP and proposal, together with the further agreements of the parties shall constitute the contract between them; and

WHEREAS, the parties wish to reduce their agreement to writing.

NOW THEREFORE, the RCPL and UMS agree as follows:

1. Services. UMS shall provide collection services as outlined in the RFP and UMS’s proposal, both of which are incorporated herein and made a part hereof as if fully set forth within this Agreement.

2. Fee. RCPL agrees to pay UMS a fee for services rendered of \$8.95 per electronically submitted account and \$9.95 per manually submitted account. This fee shall not increase for any other measures taken to gain collection. The parties agree that this shall be the sole compensation to UMS for its services under this Agreement, and no other fees or charges shall accrue to RCPL.

3. Referral. UMS agrees to undertake the collection of accounts referred by RCPL for the purpose of collection. The accounts placed with UMS pursuant to this Agreement shall be transmitted to UMS as and when RCPL determines that such accounts are eligible for referral.

4. Further Contact. After an account has been assigned to UMS, the RCPL will make no further collection contact with the debtor, but the RCPL will accept returned materials and update affected patron accounts for the electronic submission of collection information.

5. Monthly Statements and Remittance. UMS shall issue a monthly itemized statement of all collected monies or materials for each account and the associated fee payable for each account. UMS shall include any payments or materials received by RCPL in its monthly statements. With its statement for the month UMS shall remit to RCPL all monies due it on accounts that have been collected during the preceding month. UMS shall furnish each monthly statement by the twentieth (20th) day of the new month, or the following business day if the twentieth falls on a weekend or holiday.

6. Payments on Debts. All payments will be directed to RCPL to be paid. If a payment is made to UMS, it shall forward payment to RCPL within three business days. UMS shall keep accurate records of all payments received. If notice that debtor has filed bankruptcy is received by UMS or RCPL, that fact will be promptly relayed to the other party and the account shall be placed on hold pending discharge of debtor. Once discharge is approved, the account is to be cancelled.

7. Free Demand Period. The RCPL shall have a twenty-four hour free demand period. During this period, an account placed with UMS may be withdrawn without charge if such account is submitted in error. The RCPL shall notify UMS of such error within twenty-four hours after submittal in order to withdraw the account.

8. Withdrawal or Return of Claims. RCPL agrees that it will not withdraw claims referred to UMS for collection for a minimum of six months from the date of referral, except with the written approval of UMS. UMS reserves the right to cancel and return any claim for cause, which shall include claims that are unable to be verified due to RCPL not providing information or claims not lawfully collectible.

9. UMS's Warranties. UMS further warrants and covenants that it shall
- a. Use its best efforts to effect collection on RCPL's accounts;
 - b. Obtain all necessary licenses, permits or authorizations as may be required by applicable law to collect debts;
 - c. Comply with all applicable provisions of federal and state governing debt collection practices; and
 - d. Not commence litigation, with respect to any claims referred hereunder, without the express written consent of RCPL Director or designee;

10. RCPL Warranties. The RCPL warrants and covenants that it shall
- a. Forwarded to UMS only valid and legally enforceable debts;
 - b. Comply with all applicable federal and state laws; and
 - c. Provide, upon request of UMS information to enable it to verify a disputed claim.

11. Term. The initial term of this Agreement shall run from the date of approval by the RCPL until December 31, 2019.

12. Renewal. This Agreement shall automatically renew for an additional one-year term at the end of the initial term unless either party gives thirty (30) days' notice to the other party of termination at the end of the initial term. This Agreement shall automatically renew for two (2) additional one-year terms in a like manner, with the same right of the parties for non-renewal with notice. In no instance shall this Agreement remain in effect for more than three (3) years following the end of the initial term.

13. Early Termination. RCPL may terminate this Agreement prior to the expiration of the initial or renewal term as follows:

- a. following any default in the terms of this Agreement by UMS that remains uncured for more than thirty (30) days after written notice thereof;
- b. upon dissolution or winding up of UMS; or
- c. in the event a petition is filed against UMS to appoint a receiver, to declare it bankrupt, to require its reorganization under the Bankruptcy Act, or any similar insolvency statute and, if involuntary, such petition is not dismissed within ninety (90) days.

Should the RCPL choose to exercise its option to terminate this Agreement early, such termination will be effective upon mailing of written notice to UMS, at which time UMS shall have no further rights under this Agreement.

Additionally, either party may terminate this Agreement, without cause, upon sixty days' written notice to the other party.

14. Non-Appropriation. Notwithstanding any other provision of this Agreement, RCPL shall not be obligated for UMS's performance hereunder or by any provision of this Agreement during any of the City of Rapid City's future fiscal years unless and until the City's Common Council appropriates funds for this Agreement in the City's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of December 31 of the last fiscal year for which funds were appropriated. RCPL shall notify UMS in writing of any such non-allocation of funds at the earliest possible date.

15. Relationship between the Parties. The relationship of the parties is that of independent contractors. The parties are not, by virtue of this Agreement or otherwise, in an employer-employee, principal-agent, joint venture or partnership relationship with each other, and each party agrees not to represent to any other person, or to assert in any form or forum to the contrary. Neither party is authorized to act as an agent for, or legal representative of, the other party and neither party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other party.

16. Indemnity. UMS agrees to indemnify, defend and hold the RCPL harmless from and against any and all liability, losses, claims, damages, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the RCPL may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the UMS and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the UMS or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the UMS. UMS further agrees to indemnify, defend and hold the RCPL harmless from and against any and all claims, penalties, charges, or other fees which may be made, assessed or levied as a result of UMS's collections practices, including any breaches of applicable federal or state law related to those practices.

17. Notices. All notices and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when either (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses designated below (or such other address as a party may designate by notice to the other parties):

Rapid City Public Library
Attn: Library Director
300 Sixth Street
Rapid City, SD 57701

Unique Management Services, Inc.
Attn: _____
119 E. Maple St.
Jeffersonville, IN 47130

18. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

19. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

20. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

21. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

22. Assignment. This Agreement and the rights, duties, and obligations hereunder may not be transferred or assigned by either of the parties, whether directly or indirectly by merger, consolidation, reorganization, dissolution, operation of law or otherwise, without the prior written consent of the other party. Any attempted transfer or assignment without consent in violation of the foregoing shall be void. Subject to the foregoing, this Agreement and the provisions hereof shall be binding on the parties and their respective permitted successors and assigns.

23. Waivers. No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party against which the waiver is sought to be enforced.

24. Cumulative Remedies. The rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers and privileges, whether at law or in equity, under this Agreement or otherwise, that any party may have against another. No failure to exercise and no delay in exercising any right, power or privilege shall operate as a

waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude the exercise of any other right, power or privilege. No waiver of any breach or default of any covenant or agreement hereunder shall be deemed a waiver of any preceding or subsequent breach or default of the same or any other covenant or agreement.

25. Force Majeure. Neither party shall be liable for any delay or failure in performance due to any reason or unforeseen circumstance beyond the affected party's reasonable control, including shortages or delays in obtaining materials from suppliers that cannot reasonably be cured by obtaining the needed materials from another source, work stoppages not involving employees of either party that cannot reasonably be overcome, fires, riots, rebellions, wars, acts of terrorism, accidents, explosions, floods, storms, acts of God, and similar occurrences. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

26. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

27. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

28. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

29. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or, as applicable, the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

30. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

31. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of

this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Pennington County Circuit Court located in Rapid City, South Dakota.

Dated this ____ day of _____, 2018.

RAPID CITY PUBLIC LIBRARY BOARD

President

UNIQUE MANAGEMENT SERVICES, INC.

By _____
(signature)

(printed name)

Its _____