



## AGENDA REPORT

**Meeting Date:** July 7, 2009

**Item Number:** G-14

**To:** Honorable Mayor & City Council

**From:** Noel Marquis, Assistant Director of Administrative Services - Finance

**Subject:** **APPROVALS RELATED TO VARIOUS CITY PURCHASING AND BUDGET TRANSACTIONS AS DESCRIBED HEREIN**

**Attachments:** Agreement (1)

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**Item A. APPROVE AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND OVERDRIVE, INC. FOR DIGITAL BOOK TECHNOLOGY AND SERVICES FOR THE PATRONS OF THE LIBRARY**

### **RECOMMENDATION**

Staff recommends that the City Council approve an agreement between the City of Beverly Hills and Overdrive, Inc. for digital book technology and services for the patrons of the library. Overdrive is the only vendor that provides downloadable books that can be loaded directly onto an iPod.

### **INTRODUCTION**

Overdrive, Inc. is the leader in downloadable materials for public libraries. A number of large and small publishing houses make their titles available through Overdrive, Inc. This service will allow patrons to download e-books and e-audiobooks via the Library's website 24/7.

### **DISCUSSION**

E-books and e-audiobooks are formats which have evolved over the last decade. These materials have been gaining in popularity in the consumer market with the explosion in personal digital devices and e-book readers such as the Kindle and the Sony e-book Reader. The Library receives requests from patrons for books in these formats because they can be retrieved beyond the hours that the Library is open and because people are consuming information in a

variety of formats that fit in with their busy lives. Additionally, the Library benefits from offering this type of program because- 1) these "books" do not take up valuable shelf space; and 2) in some cases the items are less expensive than the paper versions. Finally, the Library strives to maintain its "best of the best" status by implementing these cutting edge types of technologies.

**FISCAL IMPACT**

The initial contract with Overdrive Inc. would be for four (4) years at \$18,000 per year for a total not-to-exceed amount of \$72,000.00. Funds were budgeted and are available in the Library Collection Services Audiovisual (0107701-72230) program of the General Fund for this purpose.

**Item B. APPROVE A CHANGE ORDER TO THE PURCHASE ORDER IN THE AMOUNT OF \$65,000 TO JSLS, INC. FOR DEBT COLLECTION CONTRACTUAL SERVICES FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$164, 500**

**RECOMMENDATION**

Staff recommends that the City Council move to approve a change order to the purchase order in the amount of \$65,000 to JSLS, Inc. for debt collection contractual services for a total not-to-exceed amount of \$164,500.

**INTRODUCTION**

JSLS, Inc. has been with the City since 2006. The vendor provides revenue collection services through discovery of non-compliant businesses within the City of Beverly Hills. Their services have been contracted for four years and are considered an important aspect of the City's revenue collection program.

**DISCUSSION**

The total amount of the purchase order issued was for \$99,500. The additional \$65,000 is needed to cover the debt collection services for fiscal year 2008-2009.

**FISCAL IMPACT**

Funds are paid directly from the funds collected and therefore, have no fiscal impact.

  
Noel Marquis  
Finance Approval

  
Scott G. Miller  
Approved By

**Digital Library Reserve  
Content Service Plan  
Application Services Agreement**

**1. INTRODUCTION**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009 by and between OverDrive, Inc., (hereinafter referred to as "OverDrive"), a Delaware corporation, Valley Tech Center, 8555 Sweet Valley Drive, Suite N, Cleveland, OH 44125 USA and the City of Beverly Hills, a California municipal corporation, located at 455 North Rexford Drive, Beverly Hills, CA 90210 (hereinafter referred to as "City"):

Library Name: Beverly Hills Public Library

Virtual Branch Name: Beverly Hills Public Library

Library's Primary Contact: Karen Buth, Library Services Manager

Address: 455 North Rexford Drive City: Beverly Hills State: CA Zip: 90210 Country: USA

Phone: (310) 288-2251

Email Address: kbuth@beverlyhills.org

Attached and incorporated in this Agreement are the following Schedules:

- Schedule "A-1" – Digital Library Reserve Application Services and Fee Schedule
- Schedule "A-2" – Digital Library Reserve Content Service Plan Fee Schedule
- Schedule "B" – Digital Library Reserve and Library Website Guidelines

WHEREAS, OverDrive is a provider of digital book technology and services including those related to the management and copyright protection of content in eBook, audio book, and multimedia in digital formats; and,

WHEREAS Library is seeking to utilize as part of its operation certain outsourced software and website services for the aggregation, management, copyright protection and distribution of Digital Products and related services; and,

WHEREAS Library seeks to license the use of and deploy software products, technology and services including those licensed to OverDrive by Microsoft® Corporation, Adobe® Systems Inc. or other vendors of Digital Rights Management (DRM) technologies.

THEREFORE, the parties agree as follows:

**2. DEFINITIONS**

As used in this Agreement, the following definitions shall apply:

2.1 "Agreement" shall mean this Agreement between OverDrive and City and all Schedules and attachments.

2.2 "Application Services" or "Application(s)" shall mean the DLR®, OverDrive®, Microsoft® Corporation, Adobe® Systems Incorporated, Adobe Benelux, B.V. and any other third party products or services identified in Schedule "A-1" attached to the Agreement.

2.3 "Application Services Fees" shall be the amounts payable by City to OverDrive in accordance with the terms of this Agreement. A schedule of the current Application Services Fees is attached to this Agreement as Schedules "A-1" and "A-2".

2.4 "Content" or "Digital Products" shall consist of digital files and titles available for loan to Patrons at the Library Website distributed using the Application Services.

2.5 "Content Reserve" shall mean the Digital Product and Content distribution service operated by OverDrive which enables Library to browse, select and license rights to Digital Products for re-distribution and lending to Library Patrons.

2.6 "Digital Library Reserve" or "DLR" shall mean the OverDrive and integrated services utilizing OverDrive, Microsoft, Adobe or other third party software applications and services that relate to the Library Website operated by the Library for managing the Digital Products.

2.7 "Digital Library Reserve Guidelines" shall mean the terms and conditions of utilizing the Digital Rights Management Application Services.

2.8 "Effective Date" shall mean the date upon which both parties have signed the Agreement.

2.9 "City" shall mean the organization or entity identified in the Introduction to this Agreement.

2.10 "Library Website" shall mean the Internet-based Digital Product application operated by the Library that provides Patrons access to Digital Products operated in association with the Digital Library Reserve and as a component of the Library website address (URL) designated by Library in the Introduction to this Agreement.

2.11 "OverDrive" shall mean: OverDrive<sup>®</sup>, Inc., a Delaware Corporation.

2.12 "Patron(s)" shall mean those persons that City authorizes to access, use, and connect to the Library Website via the Internet, and download products from or otherwise utilize the Application Services and/or access Digital Products from the Library Website using the Application Services.

2.13 "Primary Support" shall mean services provided by City to its Patrons for its day-to-day support, technical aid, help and other assistance for Patron's use of the Library Website, Applications or for any issues arising from the use of its Library Website.

2.14 "Secondary Support" shall mean technical support services to be provided by OverDrive to City including reasonable efforts to assist Library in providing Primary Support, reasonable efforts to correct, fix, or circumvent errors, and in the discretion of OverDrive, provide updates, enhancements, and new versions of the Application Services.

### **3. DIGITAL LIBRARY RESERVE APPLICATION SERVICES**

3.1 OverDrive shall provide the Digital Library Reserve Application Services to the City under the terms and conditions of this Agreement and the associated license agreements from its DRM or Digital Product and Content suppliers. This right is non-transferable and applies solely to the server-based operation, management and use of the Digital Library Reserve applications in unaltered, object code form. Nothing under the terms and conditions of this Agreement, including any of the Attachments and Schedules, grant any right to City to the use of, or access to, any Application Services source code. This grant does not include any right to reproduce the Application Services, to distribute copies or versions of any modules of the Application Services to any third parties including its Patrons, or to make and/or sell variations or derivative works of the Application Services. City shall be permitted to customize portions of the Application Services specifically the patron-facing User Interface on its website or otherwise to custom integrate the Application Services into its operational offerings. Sole ownership of copyrights and other intellectual and proprietary rights to the Application Services shall remain solely with OverDrive or its suppliers.

3.2 City assumes responsibility for providing a suitable network and Internet system for integration of Application Services into Library's website or other systems. All parties acknowledge that any expenditures or commitments are made at the risk of the party making such expenditures or commitments. City agrees that it shall be responsible for its own expenses and costs under this Agreement and that OverDrive shall have no obligation to reimburse City for any expenses or costs incurred by Library in the preparation, systems integration, use of the Application Services, or for any performance of City's duties hereunder. Specifically, DLR integrates with Library's patron authentication system using SIP2 or similar protocol. City shall, at its own expense, purchase a SIP2 license, or use an existing such license if available.

3.3 OverDrive will create and implement a customizable Library Website for the City's use of the Application Services as detailed in Schedule "A-1" that will include search function (by title category, author, keyword), multiple categories with multiple listing option, auditing and reporting functions and access to a protected web portal to manage the City's catalog of Digital Product and Content files. OverDrive will incorporate the City's name, logos and trademarks in accordance with design guidelines and suggestions as provided by City. City will have the ability to manage and promote Digital Products from a password protected Digital Library Reserve administrative web portal.

3.4 OverDrive is responsible for integrating the City's look and feel (City name, logos, colors, and website links) into the Library Website and implementation of functionality. OverDrive will implement an inventory data feed from Content Reserve to the Digital Library Reserve inventory management system to permit City to browse, select and license rights to Digital Products in supported formats and as permitted by OverDrive's publishers and suppliers. OverDrive will create the appropriate download links from the Library's Website for the secure delivery of Content to authorized Library Patrons. All Content available at the Library Website shall have at least a seven (7) day lending period, or other minimum lending period as otherwise required by suppliers or publishers of Content.

3.5 Digital Library Reserve is for remote use only (outside of the City's Library). Without the use of OverDrive Download Station software, Patrons and all other users of DLR cannot download Digital Content to any Library computers or devices. OverDrive Download Station software licenses are available for an additional fee.

#### **4. FEES AND PAYMENT**

4.1 City shall make payment of applicable fees and or deposits based on the terms and conditions of Schedules "A-1" and "A-2". OverDrive shall have sole discretion to approve any and all libraries that seek to participate in the DLR service with the organization or entity identified in the Introduction to the Agreement, as well as establish any other terms and conditions related to such expansion.

4.2 The payment obligations stated in this Section 4 are exclusive of any federal, state, municipal or other governmental taxes, sales taxes, duties, excise taxes or tariffs now or hereafter imposed on the production, storage, sale, transportation, import, export, licensing or use of the Application Services or for operation or sales activity of the Library Website. Such charges, shall be paid by City or, in lieu of payment of any tax, City shall provide an exemption certificate acceptable to OverDrive and the applicable authority.

#### **5. COPYRIGHT PROTECTION, PATRON AUTHENTICATION AND DATA SECURITY**

During the Agreement Term and any renewal periods, City will reasonably cooperate with OverDrive to achieve OverDrive's and its Publishers' and suppliers' objectives of protecting certain intellectual property interests relating to OverDrive supplied Digital Products and Content. The City shall establish policies and procedures to abide by the Digital Library Reserve Guidelines as described in the attached Schedule "B". City shall provide OverDrive access to a test Patron account for purposes of validating the system's performance relating to the Application Services. City will reasonably cooperate with OverDrive to correct or adjust systems as may be required to compensate for any errors or omissions disclosed by such test. Any such test will be conducted by OverDrive at its own expense and during regular business hours and in such a manner as not to interfere with City's normal activities. Nothing in this Section shall entitle OverDrive to any Patron data or information relating to the identity of Patrons accessing any components of the Application Services.

#### **6. RESPONSIBILITIES OF LIBRARY**

6.1 City will assign personnel with appropriate skills and expertise in computer, data processing, and related services to enable operation of the Application Services and the Library Website and to provide Primary Support. City will use reasonable efforts to operate its Digital Library Reserve and Library Website in compliance with the terms of this Agreement and all Schedules. Upon launch of the service, City shall include a direct hyperlink and/or logo to the DLR service from Library's home page. Such link or logo shall be featured no less prominently than other electronic resources including but not limited to NetLibrary, Recorded Books, MyLibraryDV.

6.2 With the exception of the Application Services configured and hosted by OverDrive, City is solely responsible for all aspects of catalog integration, operation, training, support and/or maintenance necessary for the operation of the

Library Website. City shall keep its Digital Library Reserve Account information current and alert OverDrive of any changes in its operation of its Library Website including but not limited to changes of personnel. City will use reasonable efforts to ensure that information or data relevant to the operation of the Library Website will be treated as required by applicable law and reasonable and customary commercial practices.

6.3 Library agrees to perform Primary Support for Patrons using its Library Website. City will perform requested installation, upgrade, and reasonable technical services for Primary Support of the Application Services pursuant to installation and support procedures and policies as developed by OverDrive and as modified from time-to-time. OverDrive will provide City with documentation regarding Primary Support and OverDrive support personnel will be available for Secondary Support by e-mail and phone.

6.4 City will, upon request, promptly cooperate with OverDrive by completing forms, reports, or checklists as OverDrive may require its City's to complete as part of an installation, upgrade or provision of the Primary Support of the Application Services. City shall identify and promptly inform OverDrive of any design or programming errors or omissions in the Application Services, which it becomes aware of.

6.5 City represents and agrees that it will not make any representations or create any warranties, expressed or implied, concerning the DLR Application Services products. City will take reasonable steps to insure that its employees, agents, and others under its direction, abide by the terms and conditions of this provision and this Agreement.

6.6 City shall at its own expense comply with all applicable laws, ordinances, rules and regulations, and City shall obtain any and all permits, licenses, authorization, and/or certificates that may be required in any jurisdiction or any regulatory or administrative agency in connection with the use and/or operations of the Application Services. Regardless of any disclosure made by City to OverDrive of an ultimate destination for users of the Application Services, City agrees not to export either directly or indirectly any Application Services or system incorporating such Application Services without first obtaining a license to export or re-export from the United States Government, as may be required and to comply with the United States Government export regulations, as applicable.

## **7. OVERDRIVE'S OBLIGATIONS**

7.1 OverDrive will create a Library Website that will be in compliance with the requirements listed in the attachments. As part of the Application Services OverDrive will either implement the required services directly or oversee the necessary procedures to assure compliance with the Digital Library Reserve guidelines. OverDrive will use reasonable efforts to make the Application Services perform substantially in accordance with the product description, as it may exist from time to time. However, City acknowledges that inevitably some errors may exist in the Application Services, and the presence of such errors shall not be a breach of this provision. OverDrive's sole obligation with regard to such errors shall be to use commercially reasonable efforts to correct such errors and provide Secondary Support as stated in this Agreement. Such services will be provided by phone or modem. Such services will be provided at such times as are mutually agreed upon by the parties.

7.2 Notwithstanding the foregoing, OverDrive agrees that remote access to City's systems shall be restricted as follows. While this Agreement is in effect, City shall provide OverDrive with remote access to the City's system, as necessary and only as approved by City. Such remote access shall be provided in accordance with City's network security protocols, which City shall provide to OverDrive prior to granting remote access. Such network security protocols include but are not limited to, VPN access, requiring two-part authentication, written notice, and any other protocols City deems necessary to ensure a secure remote connection. OverDrive shall provide all remote services between the hours of 7:00 a.m. and 7:00 p.m. Pacific Time (except for limited access to authenticate or validate city patron library card which shall operate 24/7), provided that OverDrive has given City's Information Technology representative prompt written notice within a reasonable time and City has approved such remote access. Such approval shall not be unreasonably withheld. For purpose of the Section, email notifications to designated City representatives noting that OverDrive shall require remote access on specified dates shall suffice.

## **8. OVERDRIVE'S OPTION TO MODIFY OR DISCONTINUE APPLICATION SERVICES**

8.1 OverDrive has the right, at any time, to make such modifications to the Application Services as it sees fit to the operation, performance, or functionality of the Application Services or as required by OverDrive's suppliers.

8.2 OverDrive has the right, at any time, to discontinue distribution of any or all Application Services or versions of Application Services, to remove supported Application Services or versions of supported Application Services from OverDrive's supported Application Services list, or to discontinue support, maintenance, or the provision of new versions, updates, or corrections for any Application Services or for any version or for any hardware or Application Services platform or operating system. If such a discontinuance of distribution of the Application Services or of support, maintenance or the provision of new versions, updates, or corrections materially impairs the value of this Agreement to City, City shall have the option to terminate this Agreement and receive a pro-rata refund of any Application Service Fees paid; such option to terminate shall expire after sixty (60) days from the date notice of termination is given.

## **9. WARRANTY**

9.1 OverDrive represents and warrants to City that it has the necessary rights to enter into this Agreement and that it has the necessary ownership and intellectual property rights and licenses to the Application Services to grant the licenses herein. OverDrive warrants that the Application Services will operate as intended if properly used by City and Patron. If any errors are discovered, City shall promptly notify OverDrive in writing as to the description of the problem, whereupon OverDrive shall use reasonable efforts to correct such problems within a reasonable time thereafter. Corrections will be provided to City with instructions for implementation.

9.2 THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE RIGHTS AND REMEDIES GRANTED TO LIBRARY AND ITS PATRONS UNDER THIS PARAGRAPH CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY OF LIBRARY AND LIBRARY'S PATRONS AGAINST OVERDRIVE FOR BREACH OF WARRANTY, EXPRESS OR IMPLIED, OR FOR ANY ERRORS OR DEFECTS IN THE APPLICATION SERVICES. IN NO EVENT SHALL OVERDRIVE OR ITS SUPPLIERS BE LIABLE TO LIBRARY OR LIBRARY'S PATRONS FOR ANY DAMAGES ARISING FROM OR RELATED TO FAILURE OR INTERRUPTION OF THE APPLICATION SERVICES, OR FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFIT OR OPPORTUNITY, LOSS OF USE OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE LICENSE, TRANSFER OR USE OF THE APPLICATION SERVICES. IN NO EVENT SHALL OVERDRIVE'S LIABILITY HEREUNDER EXCEED THE TOTAL AMOUNT RECEIVED BY OVERDRIVE UNDER THIS AGREEMENT.

## **10. INDEMNIFICATION**

10.1 OverDrive agrees to indemnify City against liability and expense, including reasonable attorney fees, arising from any breach of OverDrive's warranty that it has the required rights to the Application Services and that the Application Services does not infringe any ownership or intellectual property right of a third party, provided that OverDrive: (1) is notified immediately after City receives notice of such claim (ii) is solely in charge of the defense of and any settlement negotiations with respect to such claim; (iii) received City's cooperation in the defense or settlement of such claim; (iv) has the right, upon either the occurrence of or the likelihood (in the opinion of OverDrive) of the occurrence of a finding of infringement, either to procure for City the right to continue use of the Application Services, or to replace the relevant portions of the Application Services with other equivalent, non-infringing portions. If OverDrive is unable to accomplish either of the options set forth in (iv) above, at OverDrive's option OverDrive shall either remove the portion of the Application Services in issue and refund to City the value of such portion, or remove the entire Application Services and refund to City the entire amount paid pro-rata under this Agreement as it relates to the incident that gave rise to the claim.

10.2 OverDrive shall have no obligation to City to defend or satisfy any claims made against City that arise from use, marketing, licensing, or disposition of the Application Software by City other than as permitted by this Agreement. OverDrive shall not be responsible to indemnify City for claims arising from the use or license of third party software including DRM where OverDrive is not afforded such corresponding indemnification from said third party vendor. In the event a claim arises from use of non-OverDrive technology, where the vendor of such product or technology does not indemnify OverDrive, then OverDrive is not liable to extend indemnification under this section to City for any such claims.

## **11. TERM AND TERMINATION**

11.1 This Agreement shall take effect on the Effective Date. The initial term of this Agreement shall be for four (4) years. The Agreement shall automatically renew for successive terms of twenty four (24) months unless either party provides written notice of intention not to renew ninety (90) days prior to the expiration of the then current term.

11.2 In the event of a filing by or against either party of a petition for relief under the United States Bankruptcy Code or any similar petition under the insolvency laws of any jurisdiction, where such filing is not dismissed within thirty (30) days after the date of the filing, or should City discontinue the operations relevant to this Agreement, then the other party may immediately terminate this Agreement upon written notice.

11.3 Either party shall have the right to terminate this Agreement as a result of a material breach of the Agreement by the other party that is not cured within thirty (30) days after written notice of such breach. City shall have the option to terminate this Agreement without cause, after an initial term of eighteen (18) months from the Effective Date (“Early Termination”). City shall provide OverDrive ninety (90) days prior written notice of termination. In the event City exercises Early Termination, City acknowledges that its access to the Application Services as well as any interest in the Content purchased shall terminate and City shall make no further use of the Application Services and/or the Content.

11.4 Upon termination of this Agreement, and except as otherwise provided in this Agreement, the license granted to City by this Agreement shall be terminated immediately; City shall make no further use of all or any part of the Application Services, Content or any confidential information received from OverDrive.

11.5 The provisions of this Agreement concerning confidential information and indemnification shall survive the termination and/or expiration of this Agreement, and termination shall not relieve either party of the obligation to pay any amount due to the other.

## **12. GENERAL PROVISIONS**

12.1 Independent Contractor. OverDrive and City are independent contractors under this Agreement and nothing in this Agreement authorizes either party to act as a legal representative or agent of the other for any purpose. It is expressly understood that this Agreement does not establish a franchise relationship, partnership, principal-agent relationship, or joint venture. Neither party shall have the power to bind the other with respect to any obligation to any third party. Each party is solely responsible for its employees, including terms of employment, wages, hours, required insurance, and daily direction and control.

12.2 Confidential Information. Both OverDrive and City acknowledge that each will receive confidential information from the other relating to technical, Application Services and operational affairs of the other. Each party agrees that all confidential information of the other party shall be held in confidence and shall not be disclosed, notwithstanding any laws and regulations permitting public access to documents and information that are considered public.

12.3 Announcements. OverDrive and City may issue, at a mutually agreed upon time and in a mutually agreed upon form, a public announcement relating to this Agreement. OverDrive and City will each give the other party the opportunity to review and approve, in advance of its issuance, any public announcement or publicity relating to this Agreement or any aspect of the parties’ relationship hereunder. Notwithstanding, any public announcement including the “City of Beverly Hills” and/or “Beverly Hills Public Library” requires written authorization by City.

12.4 No Exclusivity. This Agreement is not exclusive and does not impose any obligation on either party with respect to competing relationships or opportunities.

12.5 No Waiver. The failure of either party to exercise any right or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same of any other term of the Agreement.

12.6 Notice. Except as otherwise indicated herein, all notices, requests, demands or other communications required to be given pursuant to the Agreement shall be in writing and shall be deemed to have been given, if sent by U.S. mail, registered or certified mail, return receipt requested, postage prepaid, addressed to the parties at their place of business or to such other addresses as the parties direct in writing. Notice to OverDrive shall be addressed to OverDrive at the address provided in the Introduction, Attention: President or to such person or to such address as OverDrive may designate. Notice to City shall be addressed to the address for City in the Introduction to this Agreement, Attention to the individual signing on behalf of City or to such person or to such address as City may designate.

12.7 Force Majeure. Neither party shall be deemed in fault of this Agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies, or any other causes beyond the control of such party provided that such party gives the other written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof and uses its best efforts to cure the delay. In the event of such Force Majeure, the time of performance or cure shall be extended for a period equal to the duration of the Force Majeure but in no event shall exceed three (3) months.

12.8 Assignment. OverDrive may assign this Agreement. This Agreement may not be assigned by City, nor any duty hereunder be delegated by City without the prior written consent of OverDrive. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, legal representatives, successors and permitted assigns.

12.9 Limitations of Liability. In the event of failure of either party to fulfill any of its obligations hereunder, the initial remedy of the other party under this Agreement shall be to request performance of such obligation. If such performance is not rendered, the other party may terminate the Agreement pursuant to Paragraph 11.3, and where appropriate, bring an action for any moneys due and payable hereunder for services rendered. However, either party shall be entitled to enforce its rights regarding patents, copyrights, trademarks, or trade names, by any appropriate action, including actions for damages and equitable relief.

12.10 Injunctive Relief. The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information, use of OverDrive's and/or DLR's trademarks, copyright, and other intellectual property rights, and/or Non-competition, will not be adequate for OverDrive's protection, and accordingly OverDrive shall have the right to obtain, in addition to any other relief and remedies available to it, injunctive relief to enforce the provisions of this Agreement.

12.11 Severability. In the event that a court of competent jurisdiction determines that any portion of the Agreement is unenforceable, void, invalid or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect as though such invalid provisions were deleted.

12.12 Governing Law. This Agreement shall be governed and interpreted in accordance with the substantive law of the State of California, United States of America.

12.13 Entire Agreement. This Agreement constitutes the entire Agreement and understanding of the parties and supersedes all prior and contemporaneous Agreements, understandings, negotiations and proposals, oral or written. Section headings are provided for convenience purposes only and do not provide any modifications or substantive meaning to the terms and conditions of this Agreement. This Agreement may be amended or modified only by a subsequent Agreement in writing signed by each of the parties and may not be modified by course of conduct.

12.14 Binding. This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors. In the event OverDrive enters into an agreement to sell substantially all the assets of OverDrive, this agreement shall be binding upon the purchaser.

*[signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives:

Accepted and Agreed:

**OverDrive, Inc.**

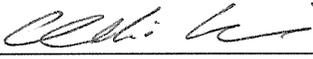
**("OverDrive")**

8555 Sweet Valley Drive, Suite N  
Cleveland, Ohio 44125 USA

**City of Beverly Hills**

**("City")**

**Nancy Krasne, Mayor of the City of Beverly Hills,  
California**  
455 North Rexford Drive  
Beverly Hills, California 90210 USA

By (signature): 

By (signature): \_\_\_\_\_

Name (Print): Claudia Weissman

Name (Print): \_\_\_\_\_

Title: Vice President of Sales

Title: \_\_\_\_\_

Date: May 28, 2009

Date: \_\_\_\_\_

By (signature): 

Name (Print): Michael J. Vantush

Title: CEO

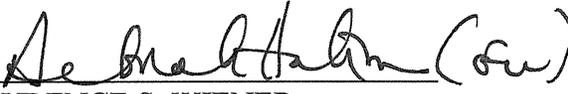
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City of Beverly Hills Signature Page  
OverDrive, Inc.

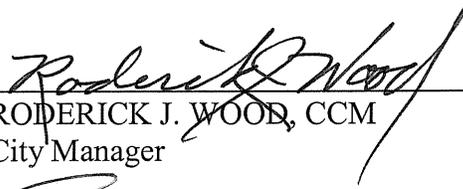
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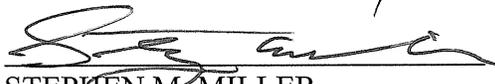
\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
RODERICK J. WOOD, CCM  
City Manager

  
\_\_\_\_\_  
STEPHEN M. MILLER  
Director of Community Services

**Schedule "A-1"**  
**Digital Library Reserve**  
**Application Service and License Fee Schedule - (Content Service Plan)**

The following modules comprise Digital Library Reserve library services for library administration of a circulating digital content collection. All prices are in USD.

Application Service	Service Information	Setup and Configuration Fee	Application License and Hosting Fee
Digital Library Reserve Server (DLR-S)	DLR is the digital content repository and database established for each library. Included is support for delivery and fulfillment of Adobe software compatible with DRM-protected eBooks, Mobipocket PDA titles, and digital audio books. Includes associated copyright protection services (DRM). Included with this fee are all third party software and technology licenses. Services are hosted at the secure DLR hosting center. Access to library-managed services is accomplished via secure admin web services. The library utilizes a PC, Internet connection and Web browser (Internet Explorer 5.5 or higher) to administer its digital collection. No additional hardware or software is required by library.	Per Schedule A-2	Per Schedule A-2
DLR Opening Collection (DLR-OC)	The Opening Collection is comprised of the initial set of digital titles selected by the library for lending to its patrons.	Per Schedule A-2	
DLR Patron Website (DLR-PW)	This is the patron facing Website customized to include the library's look-and-feel and links to other library Internet sites. The Patron Website is a complete digital book center providing browsing, searching, promotional and checkout services for patrons to explore and download digital media to their own PC or mobile devices.	Included	
DLR Content Reserve Collection Access (DLR-CRCA)	This module enables the library collection staff to administer approval plans and development profiles to aid in building its digital content collection from Digital Library Reserve. Each account has access to digital media from leading publishers. Digital Library Reserve offers a large collection of best-selling popular, academic, business and educational titles.	Included	
DLR Patron Authentication Integration (DLR-PAI)	OverDrive personnel will work with library automation personnel to integrate its existing patron authentication system. Will support present library card, student ID, or other authentication to insure access of titles is limited to library patrons.	Initial integration of one ILS included	Subsequent integrations may be subject to additional fees
DLR OPAC Record Integration (DLR-OPAC)	OverDrive will assist Library to coordinate access to MARC records for integration into the library catalog for patron searching and direct access to eBook and audio book titles. Included in the record will be a direct link for patrons to view the eBook and audio book title and status for lending. MARC records are available for purchase by Library from OCLC.	MARC Records available for purchase from OCLC	
DLR Open Content Collection (DLR-OPC)	This module permits uploading digital content from other sources into the collection. This permits direct management of supported files and setting DRM to manage copyright protection and circulation of the title. This also enables the library to acquire eBooks and other documents directly from publishers and authors.	Included	
DLR Windows® Media Server (DLR-WMS)	Support for download or streaming of copyright protected digital audio and video using Microsoft® Windows® Media Series 9 and up. * OverDrive reserves the right to limit bandwidth and impose additional hosting fee charges.	Included*	Increased bandwidth subject to additional charges

**Schedule "A-2"**  
**Digital Library Reserve**  
**Content Service Plan Fee Schedule**

1. **Monthly Application License and Hosting Fee:** City shall pay OverDrive a monthly fee of **\$1,500.00**. This includes all fees for all services including the DLR System License, configuration and customization of website services, third party software licenses, hosting and maintenance of the application services, training, plus an opening credit for digital content. OverDrive shall submit initial invoice to City within thirty (30) days from the Effective Date of the Agreement. The initial invoice to City shall include, the first three (3) months of Content Service Plan Fees, which includes the fees for OverDrive's development, configuration, website design, testing and other pre-launch services before go-live and all other services after go-live of the City's DLR website. After the initial invoice, OverDrive shall invoice City quarterly for Content Service Plan Fees. After the initial term of four (4) years, the Fee shall be reduced to **\$1,000.00** per month.
2. **Opening Collection:** The Opening Collection is comprised of the initial set of digital titles selected by Library for lending to its patrons. Under the terms of this Content Service Plan, Library shall receive a one time Opening Collection Credit of \$10,000 (SRP) toward the selection of the digital titles. Anytime during the term of this Agreement Library may select additional titles and material subject to standard terms and pricing.
3. **Payment:** City shall pay OverDrive within thirty (30) days of receipt of OverDrive's invoices.

**Schedule "B"**  
**Digital Library Reserve and Library Website Guidelines**

**1. Patron Support Resources**

City will provide Primary Support for its Patrons via e-mail and/or by phone in direct support of all Patron inquiries, issues, and problems relating to the Library Website. City will post on the Library Website OverDrive supplied Frequently Asked Questions (FAQs) and other support information and links to assist with providing Patrons with answers to frequently asked questions. City will cooperate with OverDrive to implement practices as recommended by OverDrive to reduce the instances of Patron technical support issues.

**2. Copyright Protection, Patron Authentication and Data Security**

City will take reasonable steps to prevent unwarranted intrusion into data managed or maintained by OverDrive or on behalf of City and acquired in the course of City's operation of City's Application Services. This includes reasonable steps to protect its password and access to City's administrative website for management of its Digital Library Reserve and Library Website.

For Digital Products and Content which City acquires rights from OverDrive's Content Reserve for re-distribution and lending to Patrons, City agrees to deploy the following practices and methods to respect the Copyright Protection and Patron Authentication terms of OverDrive's Publishers and suppliers:

- A. City will respect and deploy the DRM protection settings as designated by Publisher that may restrict copying, sharing and/or printing.
- B. City acknowledges that Digital Product titles selected will not entitle City to access a copy of the title, but will enable its Library Website the right to provide immediate download access to the title for their Patrons as fulfilled through the Application Services after the DRM services have been applied.
- C. City is not granted any license to use titles for any "online" use, except for the display of Digital product cover art, excerpts and metadata as designated by Publisher and available from Content Reserve.
- D. City will be allowed to loan to their patrons or "check-out" Digital Products or Content via a download link from the Library Website. City acknowledges that all circulating Digital Products will have a predetermined period for an automatic self-expiring use period or "time-out", which shall not be less than seven (7) days or other minimum lending period as required by publishers and suppliers.
- E. A Digital Product in the Library's Website that is checked out by a Patron will not be available for another Patron to check out unless multiple copies of the title have been selected by City, or until the expiration period of the first Patron's time period has expired.
- F. City will take reasonable measures to ensure that only authorized Patrons of their Library have access to the Library Website for access to Digital Products or Content.
- G. Authorized Patrons will be defined as those Patrons of the library that have the required relation to the Library to receive a library card. It is agreed that the criteria for defining Authorized Patron shall include some restrictions from allowing users with no practical physical access to the City's location.

**3. Third Party Logo and Trademark Use Guidelines**

City acknowledges that its Library Website will utilize and rely upon third party software and technologies provided by OverDrive, Microsoft Corporation, Adobe Systems, Inc., and other technology suppliers. OverDrive shall provide to City the applicable guidelines for utilizing the registered trademarks, logos, and software products associated with Library's operation of the Library Website. City agrees to abide by the terms and conditions of these third party suppliers. OverDrive will provide to City all necessary links, art, logos and instructions to permit City to comply with this provision.