

**PERSONAL SERVICES AGREEMENT  
BETWEEN  
THE LOS ANGELES PUBLIC LIBRARY  
AND  
GIBBS M. SMITH, INC.  
FOR  
BOOK SALES AND DISTRIBUTION SERVICES  
RELATED TO ANGEL CITY PRESS AT LOS ANGELES PUBLIC LIBRARY**

**This Agreement** is entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "CITY"), acting by and through its Board of Library Commissioners (hereinafter "BOARD" or "LIBRARY"), and Gibbs M. Smith, Inc., (hereinafter "CONTRACTOR"). The LIBRARY and the CONTRACTOR may be referred to herein individually as a "Party" or collectively as the "Parties."

**WHEREAS**, the LIBRARY desires to appoint the CONTRACTOR as the exclusive distributor for books and materials published by Angel City Press at Los Angeles Public Library (hereinafter "ACP at LAPL"); and

**WHEREAS**, CONTRACTOR is prepared to accept such an appointment by the LIBRARY.

**NOW, THEREFORE**, in consideration of the promises, and of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

**1.0 DOCUMENTS**

This Agreement shall be composed of the following documents which shall be made a part hereof as though fully set forth herein:

1.1 This Agreement.

1.2 Standard Provisions for City Agreements (Rev. 9/22 [V.1]), which are attached hereto and incorporated herein by reference hereinafter as Exhibit A.

**2.0 ORDER OF PRECEDENCE**

This Agreement contains the full and complete Agreement between the Parties. No verbal agreement or conversation with any officer or employee of either Party shall affect or modify any of the terms and conditions of this Agreement. Resolution of any conflicting provisions in the documents constituting this Agreement shall be resolved by considering the documents according to the following order of precedence:

2.1 This Agreement.

2.2 Standard Provisions for City Agreements (Rev. 9/22 [V.1]), which are attached hereto and incorporated herein by reference hereinafter as Exhibit A.

### **3.0 INTRODUCTION**

- 3.1 The LIBRARY shall appoint the CONTRACTOR, during the term of this Agreement, to be the exclusive provider of the services described in Section 4.0 below for all ACP at LAPL retail trade, corporate resale, and education accounts (herein called “the Accounts”) within the agreed-upon Territory, including, but not limited to:
  - 3.1.1 Independent, department store, and chain book stores;
  - 3.1.2 University and college book stores;
  - 3.1.3 Specialty and gift accounts, businesses, institutions, and the public, with the exceptions of LIBRARY – and Los Angeles Public Library – operated websites and retail stores located within or operated by the Los Angeles Public Library system and its branches;
  - 3.1.4 Book wholesalers and contractors;
  - 3.1.5 Schools and libraries with the exception of the Los Angeles Public Library;
  - 3.1.6 Direct sales other than events where LIBRARY participates directly as an organizer or exhibitor;
  - 3.1.7 Book clubs;
  - 3.1.8 Warehouse clubs; and
  - 3.1.9 Online book resellers.
- 3.2 The CONTRACTOR will be a nonexclusive distributor to individuals and businesses that purchase directly from CONTRACTOR or LIBRARY for non-resale purposes.
- 3.3 The Territory for distribution shall be all areas of the world.

### **4.0 SERVICES TO BE PROVIDED**

Upon execution of the Agreement, CONTRACTOR will be required to provide the services described as follows:

- 4.1 Selling and marketing books and materials published by ACP at LAPL throughout the Territory.
- 4.2 Maintaining ongoing contact with the Accounts.
- 4.3 Attending the appropriate trade fairs and conventions;

- 4.4 Producing and distributing to the Accounts a semi-annual catalog and order materials, which catalog shall be in both digital and print format. The digital format shall include all new and back-list titles, while the print format will be designed to feature new and selected best-selling back-list titles.
- 4.5 Distributing review copies of titles.
- 4.6 Distributing other marketing materials and information as necessary in the CONTRACTOR'S judgment to promote the sales of titles.
- 4.7 For royalties due to LIBRARY'S authors: calculating, maintaining records, communicating, and remitting the accrued royalties due on a schedule to be agreed upon by LIBRARY and CONTRACTOR and consistent with the royalty agreements.
- 4.8 The LIBRARY shall allow the CONTRACTOR to take from stock, promotional copies of titles to be distributed as review copies and as samples to sales representatives, provided that the number of promotional copies shall be limited to fifty (50) copies without prior authorization by LIBRARY.
- 4.9 The LIBRARY agrees to consult with the CONTRACTOR on the design and price of each book to be distributed; however, all final decisions regarding design and price will be made by the LIBRARY.
- 4.10 The CONTRACTOR shall provide appropriate warehouse facilities to receive, store and ship the stock.
- 4.11 The CONTRACTOR shall ensure that the LIBRARY is sent, on or before the tenth day of each month, a report listing by title:
  - 4.11.1 All stock on hand on the first day of the month.
  - 4.11.2 All sales of stock during the previous month.
  - 4.11.3 All returns of stock during the previous month.
  - 4.11.4 Damaged stock.
  - 4.11.5 All promotional copies of titles removed from stock during the previous month (herein called the "Sales Report").
  - 4.11.6 All receipt of stock during the previous month.

## **5.0 ORDERS**

- 5.1 The LIBRARY shall provide a list of existing Accounts and refer all future orders from the Territory to the CONTRACTOR for fulfillment.

- 5.2 Stock damaged in transit shall be noted on arrival in the CONTRACTOR'S warehouse and the LIBRARY advised of such damage.
- 5.3 The LIBRARY will promptly inform the CONTRACTOR when the LIBRARY intends to cease printing any title or has made any rights or remainder sale that may affect the CONTRACTOR'S Territory.

## **6.0 SHIPPING AND SHIPPING COSTS**

The LIBRARY shall bear all transportation costs of shipping stock from the LIBRARY'S warehouse to the CONTRACTOR'S warehouse facility. The LIBRARY shall package and ship all stock in accordance with the specifications set forth in Exhibit A "Gibbs Smith, Contractor's Shipping Instructions."

- 6.1 The LIBRARY shall bear all risk of loss of the stock until its delivery to and acceptance by the CONTRACTOR. Thereafter, with respect to any stock in the custody or possession of the CONTRACTOR, the CONTRACTOR shall Bear the risk of loss provided that the CONTRACTOR'S total liability shall not exceed an amount equal to fifteen percent (15%) of the total List Price (Retail) for the loss of damaged stock. Notwithstanding the foregoing, the CONTRACTOR shall incur no liability for inventory shortages of any stock which does not exceed one percent (1%) of the total quantity of the stock warehoused during the year by the CONTRACTOR.

## **7.0 INSURANCE**

- 7.1 The CONTRACTOR shall insure for fire, theft, and/or vandalism at the Manufacturing cost, or an amount equal to fifteen percent (15%) of the List (Retail) Price of all the stock on hand. The CONTRACTOR'S liability will not exceed 15% of the total List (Retail) Prices for lost or damaged stock. In the event of a claim, the LIBRARY shall supply a statement listing the true manufacturing cost for insurance purposes.

## **8.0 PAYMENTS AND FEES**

- 8.1 The CONTRACTOR shall deduct fees based on 25 percent of net sales for the month, calculated as CONTRACTOR's invoiced amount of LIBRARY's books and materials sold, less credits from returned LIBRARY books and materials. Other amounts to be deducted from payments are:
  - 8.1.1 \$.02 per unit per month for all stock that exceeds one year of sales based on the prior 12 months of sales.
  - 8.1.2 Royalty accounting fees of \$250 per month, plus \$1,500 for each of two periodic groups ("runs") of royalty statements and payments created each year.

- 8.1.3 Royalties payable, which are set aside for payments to the author by CONTRACTOR on the contracted schedule in each author's agreement.
- 8.1.4 Labor costs at \$40 per hour, to be adjusted from time to time on mutual agreement, for mitigating shipments received noncompliant with shipping specifications in Section 6.0, performing or responding to audits requested by LIBRARY or its authors, or for other services requested by LIBRARY but otherwise not included in this Agreement.
- 8.2 The CONTRACTOR shall, in 90 days from the last day of sales of each monthly Sales Report, pay to the LIBRARY the remittance of Section 8.1 plus or minus certain adjustments (see Section 8.3).
- 8.3 The CONTRACTOR shall have the right to hold back 15% of the payments owed to the LIBRARY under Section 8.1 for each of the first six (6) months in which payment is due. The payments so held back will be retained as a contingency fund against returns of stock which may create a negative balance. At the end of the six (6) month period, the CONTRACTOR shall pay the amounts held back to the LIBRARY, less all accumulated returns and adjustments. Notwithstanding the foregoing, for the purposes of accounting for the quantity of each title reasonably likely to be returned within one (1) year after the date of sale thereof, the CONTRACTOR reserves the right to withhold a reasonable portion of the LIBRARY'S payment to cover the expected return.
- 8.4 Payments shall be made to "Los Angeles Public Library" and mailed to the following address:

Business Office  
Attention: Madeleine M. Rackley, Business Manager  
Los Angeles Public Library  
630 W. Fifth Street  
Los Angeles, CA 90071

## **9.0 DEBTS**

The CONTRACTOR shall provide facilities to invoice Accounts and collect debts from them. Bad debts are the responsibility of the CONTRACTOR and do not release the CONTRACTOR from its obligations, as set out in Section 8.3, to the LIBRARY

## **10.0 BAR CODES**

The CONTRACTOR agrees to obtain ISBN numbers and print barcodes within required specifications for each Title.

**11.0 REMAINDERS/DAMAGE**

The CONTRACTOR will identify quantities and titles of remainders/damaged titles and notify the LIBRARY of such. Once the LIBRARY has confirmed the status of such titles, the CONTRACTOR and LIBRARY shall evenly split the proceeds on these sales.

**12.0 SALES**

The LIBRARY must have a minimum of five books in print and commit to publish one new book each season.

**13.0 MISCELLANEOUS**

13.1 Governing Law; Arbitration. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agreed that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

13.2 Binding Nature & Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Contractor may not assign this Agreement or any rights hereunder without the prior written consent of Library.

13.3 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one Agreement.

13.4 Severability. If any provision, clause or part of this Agreement, or the application thereof under certain circumstances, is held invalid, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby.

13.5 Waiver. A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be obtained in writing.

13.6 Interpretation. This Agreement shall be construed as if each of the parties drafted it. The section headings and captions used herein are for ease of reference only and shall not define or limit the provision hereof.

13.7 Compliance with Applicable Laws. Distributor shall at all times in undertaking the efforts pursuant to the Agreement comply with all applicable laws, statutes, ordinances, rules and regulations.

**14.0 INDEMNIFICATION AND INSURANCE REQUIREMENTS**

The insurance and indemnification provisions shall be as required by the Standard Provisions for City Agreements (Rev. 9/22 [V.1]) (Exhibit A).

**15.0 TERM OF AGREEMENT**

The term of this Agreement shall be for three years. This Agreement will go into effect at the time of the transfer of the gifted assets that will constitute ACP at LAPL to the City (the "Gift Transfer"). In the event that the Gift Transfer is abandoned, this Agreement shall be null and void and shall not become effective.

**16.0 TERMINATION**

After the initial term, the Agreement will continue until terminated by either party giving to the other six (6) months notice in writing that this Agreement shall terminate on either the 1st of February or the 1st of August. Whoever initiates termination carries the cost of the transportation of the stock to the other's designated location. Final payment (which may represent the final 3 months' sales) will be made six (6) months after the termination date due to the Distributor's return policy, which allows returns of books up to one year from date of sale.

**17.0 OWNERSHIP**

All documents and records (hereinafter collectively referred to as "documents") provided by LIBRARY to CONTRACTOR shall remain the property of LIBRARY and must be returned to LIBRARY upon termination of this Agreement or at the request of the LIBRARY. The provisions of this section shall survive the termination of this Agreement.

**18.0 AMBIGUITY**

Any ambiguity in this Agreement shall not be interpreted against any one Party by virtue of that Party being drafter of the Agreement.

**19.0 CONTRACT REPRESENTATIVES**

The following representative individuals and addresses shall serve as the place to which notices and other correspondence between the Parties shall be sent.

LIBRARY and CONTRACTOR shall notify, in writing, the other Party of any changes in the following information within five (5) working days of such change.

**CONTRACTOR'S REPRESENTATIVE**

Firm: Gibbs M. Smith, Inc.,  
Name: Brad Farmer  
Title: Chief Executive Officer  
Address: 1877 East Gentile St.  
Layton, Utah 84040  
Phone: (801) 927-2164  
Email: brad.farmer@gibbs-smith.com

## LIBRARY'S REPRESENTATIVE

Name: Susan Broman  
Title: Assistant City Librarian  
Address: 630 W. Fifth Street  
Los Angeles, CA 90071  
Office: Administrative Office  
Email: sbroman@lapl.org

Formal notices, demands and communications to be given hereunder by either Party must be made in writing and may be affected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and will be deemed communicated as the date of mailing.

If the name of the person designed to receive the notices, demands or communications or the address of such person is changed, written notice must be provided as described in this Agreement, within five (5) business days of such change.

### **20.0 INDEPENDENT CONTRACTOR**

CONTRACTOR'S relationship to CITY in the performance of this Agreement is that of an independent contractor and not as an agent or employee of CITY. Therefore, neither CONTRACTOR, nor any of its employees or subcontractors are entitled to any City-provided vacation, sick leave, Workers' Compensation, pension, or any other CITY benefits. CONTRACTOR'S personnel performing services under this Agreement shall at all times be under CONTRACTOR'S exclusive direction and control and shall be employees or subcontractors of CONTRACTOR and not of CITY. Further, CONTRACTOR shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all related reports and obligations including but not limited to social security, income tax withholding, unemployment compensation, and workers' compensation.

### **21.0 RETENTION OF RECORDS**

Except as otherwise expressly directed by CITY, CONTRACTOR shall maintain records, including records of financial transactions, pertaining to the performance of the Agreement, in their original form, in accordance with requirements prescribed by CITY. These records must be retained for a period of no less than forty-eight (48) months following final payment made by CITY hereunder, the expiration date of this Agreement, or the termination date of this Agreement, whichever occurs last. Records will be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this Agreement or within the forty-eight (48) months following the final payment made by CITY hereunder, the expiration of this Agreement, or the termination date of this Agreement, whichever occurs last. CONTRACTOR shall provide any reports requested by CITY regarding performance of the Agreement.

**22.0 NO THIRD-PARTY BENEFICIARIES**

Nothing herein is intended to create a third party beneficiary in any subcontractor. The CITY has no obligation to any subcontractor. No privity is created with any subcontractor by this Agreement. Even if CONTRACTOR uses subcontractors, CONTRACTOR remains responsible for complete and satisfactory performance of the terms of this Agreement.

**23.0 REQUIREMENTS APPLY TO ALL SUBCONTRACTORS**

CONTRACTOR will ensure that its employees and subcontractors comply with the requirements of this Agreement.

**24.0 CONTINUED REQUIREMENTS**

The requirements of Section 23.0 (“Requirements Apply to all Subcontractors”) survives termination of the Agreement.

**25.0 NON-EXCLUSIVE AGREEMENT**

LIBRARY cannot estimate nor guarantee the volume or amount of work to be received by CONTRACTOR under this Agreement.

**26.0 BORDER WALL BID DISCLOSURE**

CONTRACTOR shall comply with Los Angeles Administrative Code (“LAAC”) Section 10.50 *et seq.*, “Disclosure of Border Wall Contracting.” CITY may terminate this Agreement at any time if CITY determines that CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1. The required affidavit must be submitted online at [www.rampla.org](http://www.rampla.org).

**27.0 ENTIRE AGREEMENT**

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire Agreement between the Parties and supersedes any prior representation, understandings, communications, commitments, agreements, or proposals, oral or written. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement.

*(SIGNATURE PAGE TO FOLLOW)*

CONTRACT/AGREEMENT NO. \_\_\_\_\_

**IN WITNESS THEREOF**, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

By \_\_\_\_\_  
VALERIE LYNNE SHAW  
President  
Board of Library Commissioners

By \_\_\_\_\_  
BRAD FARMER  
Chief Executive Officer  
Gibbs M. Smith, Inc.,

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

**ATTEST:**

HYDEE FELDSTEIN SOTO, City Attorney

By \_\_\_\_\_  
JOSHUA M. TEMPLET  
Deputy City Attorney

By \_\_\_\_\_  
RAQUEL BORDEN  
Secretary to the Board

Date \_\_\_\_\_

**ATTEST:**

HOLLY L. WOLCOTT, City Clerk

By: \_\_\_\_\_

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



(Updated: January 01, 2022)

## SHIPPING AND DELIVERY INSTRUCTIONS:

- Shipping:** **FOB PORT** Gibbs Smith will arrange all shipping from PORT to our 570 N. Sportsplex Drive, Kaysville, Utah 84037 warehouse with MEADOWS WYE CONTAINER.
- CARTON WEIGHT RESTRICTION:** No carton to exceed **40 lbs.** U.S. Cartons requiring repacking will be charged back at US\$3.00 per carton.
- CARTON SIZE:** **Shipping cartons must not exceed 12" high X 13" wide when possible.**
- CARTON & PALLET LABELS:** **CARTON Label** on 1 long & 1 short side. **PALLET Label** on all 4 sides of each pallet.
- CARTONS:** All books packed into marked DOUBLE WALL cartons, shrink wrapped and banded onto WOOD pallets.
- CARTON QUALITY:** All cartons must meet or exceed **E.C.T. (for corrugated) EDGE CRUSH TEST ... 32 lbs. Per in. MULLIN BURST TEST (for corrugated) 275 lbs. Per Sq. Ft.**
- CARTON TAPING:** All cartons must have shipping TAPE applied to all outside edges for strength.
- PALLETS:** Ship on 100% solid WOOD pallets measuring **40" x 48"** that can be lifted from all 4-sides by pallet jack or forklift. Pallet height must not exceed **42" tall** including pallet. **We do not accept pallets with BLOCK CORNERS made from composite pressed particle board, plywood, plastic or cardboard that can only be lifted from 1 or 2 sides. A charge of US\$100 per pallet will be deducted from your final invoice for any pallets that do not meet these requirements. SPECIAL NOTE: Use only HEAT DRIED solid wood pallets. No 'green' wood pallets.**
- SHIPPING DOCUMENTS:** Send (1) complete set of shipping documents to freight company/agent handling the container. Also send (1) complete set of shipping documents directly to Marty Lee @ Gibbs Smith, Publisher
- DELIVERY APPOINTMENT REQUIRED:** As of Monday, June 27, 2005 Gibbs Smith, Publisher will only accept deliveries between **8:00 am to 12:00 noon daily.** You (the printer) or your shipper, freight agent, or trucking company must contact MARTY LEE @ 801-927-2117 not less than 48 hrs. in advance of **delivery** drop off date to schedule a delivery appointment. **DELIVERIES WILL NOT BE ACCEPTED WITHOUT a CONFIRMED APPOINTMENT. Trucks arriving unannounced and without an appointment will not be unloaded until the next business day and will be unloaded according to the pre-existing appointment schedule.**

Best regards,

**MARTY LEE**

Vice President, Production



1877 East Gentile Street  
Layton, Utah 84040 (USA)

**Direct: 801.927.2117**

Fax: 801.544.5582

Email: [marty.lee@gibbs-smith.com](mailto:marty.lee@gibbs-smith.com)

[www.gibbs-smith.com](http://www.gibbs-smith.com)