

LIBRARY SERVICES AGREEMENT

This **LIBRARY SERVICES AGREEMENT** ("Agreement") is made as of the ____ day of December, 2010, between **LIBRARY SYSTEMS & SERVICES, LLC**, a Maryland limited liability company with a mailing address at 12850 Middlebrook Road, Suite 400, Germantown, Maryland 20874, Attention: Frank A. Pezzanite, CEO, an e-mail address at frank.pezzanite@lssi.com and a fax number of 301-540-5522 ("LSSI"); and **CITY OF FARMERS BRANCH, TEXAS**, a Texas home rule municipality, with a mailing address at 13000 William Dodson Parkway, Farmers Branch, Texas 75234, Attention: City Manager, an e-mail address at gary.greer@farmersbranch.info and a fax number of 972-247-5939 ("City"). LSSI and City are each sometimes referred to herein as a "Party" and collectively, the "Parties".

The Parties agree as follows:

1. Services and Warranty.

(a) *Services.* During the Term of this Agreement, LSSI will provide the labor and management services described on Schedule A (collectively, "Services").

(b) *Warranty on Services.* LSSI warrants that it will perform the Services with at least the care, diligence and expertise generally accepted in the operation of public libraries of similar size collection and materials circulation in the Dallas/Ft. Worth Metroplex.

(c) *Provision of and Warranty on Goods.* LSSI may purchase goods for use in the management and operation of the Farmers Branch Manske Library ("Library"). At LSSI's sole discretion, LSSI may select sources of goods, which may include affiliates of LSSI. Title to all items purchased by LSSI shall at all times reside in City. If LSSI furnishes any goods to City, LSSI will use good faith efforts to extend the manufacturer's warranty, if any, to City. **There are no other warranties, express or implied, including warranties of merchantability or fitness for particular purpose.**

(d) *Response to Request for Proposal.* On or about October 8, 2010, LSSI delivered to City that certain *LSSI Proposal for Operation and Administration of the Farmers Branch Manske Library* ("the Proposal"), the contents of which are incorporated herein by reference and shall constitute additional provisions to this Agreement. In the event of any conflict between the warranties, representations, and obligations of LSSI set forth in the Proposal and contained in this Agreement, the warranty, representation, or obligation most favorable to City shall apply.

2. Term and Termination.

(a) *Initial Term.* This initial term of this Agreement shall commence on January 1, 2011, ("Effective Date"), and continues in force until December 31, 2013 ("Expiration Date"), unless sooner terminated in accordance with this Section 2 (said period being the "Initial Term").

(b) *Termination for Convenience.* Either Party may terminate this Agreement without cause by giving the other Party not less than ninety (90) days written notice prior to the proposed date of termination.

(c) *Termination for Default.* If either Party breaches any material provision of this Agreement and fails to correct the breach on or before the thirtieth (30th) day after receiving written notice specifying the breach (or, if the breach cannot be corrected before the end of the thirtieth (30th) day, fails to progress diligently towards correction), then the other Party may terminate this Agreement by giving written notice to the breaching Party, except that LSSI shall have the right to terminate this Agreement if City fails to pay any amount due LSSI and such failure continues for thirty (30) days after written notice thereof.

(d) *Renewal.* Subject to the termination provisions in accordance with this Section 2, this Agreement shall automatically renew and the Expiration Date extended for successive renewal periods of one (1) year each after the Initial Term, unless written notice of intent to not renew is given not later than ninety (90) days prior to the then current Expiration Date, as extended.

3. *Price and Payment.*

(a) *Price.* LSSI shall perform the Services for the Charges (exclusive of any current or future sales or use taxes charged to LSSI for goods purchased for City) set forth in Section E of Schedule A.

(b) *Payments.* LSSI shall invoice City prior to each month's service for the monthly amount set forth in Section E of Schedule A. Invoices shall be paid by bank wire transfer to a bank account designated by LSSI on or before the fifth (5th) day of such month (the "Due Date"). Amounts not paid by City to LSSI within thirty (30) days after the Due Date shall be subject to interest at the rate set forth in Ch. 2251, Texas Government Code ("Prompt Payment Act"). Both parties recognize and agree that City is exempt from sales and use taxes. City will furnish to LSSI, in advance, a valid certificate of exemption from such taxes.

(c) *Price Adjustment.* If after the Effective Date a change in law or regulation imposes a new fee or tax that must be paid by LSSI when purchasing goods pursuant to this Agreement, title to which goods shall belong to City, City agrees to pay such taxes to the extent the City is not exempt from same.

4. *Insurance and Indemnification.*

(a) *Insurance.* During the term of this Agreement, LSSI shall maintain in force at its own expense the following insurance:

- (1) Comprehensive general liability insurance coverage of at least one million dollars (\$1,000,000) combined single limit.
- (2) Automobile liability insurance covering any vehicles owned and/or operated by LSSI, its officers, agents, and employees, and used in the performance of this Agreement; and
- (3) Statutory Worker's Compensation Insurance covering all of Contractor's employees or subcontractors involved in the provision of services under this Agreement.

All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "B" by AM Best or other equivalent rating service, or be approved by the City Risk Manager.

(b) Certificates of Insurance. All insurance and certificate(s) of insurance shall contain the following provisions:

(i) name City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers' Compensation Insurance;

(ii) provide for not less than thirty (30) days prior written notice to City for cancellation, non-renewal, or material change of the insurance;

(iii) provide for a waiver of subrogation in favor of City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(c) Indemnification. LSSI HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES, AND AGENTS, (HEREINAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, LIABILITY OR DAMAGE OF ANY CHARACTER, AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS, CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY INTENTIONAL OR NEGLIGENT ACT, ERROR, OMISSION OR NEGLECT OF LSSI, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER LSSI'S DIRECTION AND CONTROL, AND ARISING OUT OF, OCCURRING IN CONNECTION WITH, RESULTING FROM OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES CALLED FOR BY THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, LSSI SHALL BE OBLIGATED TO INDEMNIFY THE INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY.

(c) Property Insurance. City shall be solely responsible for keeping its buildings and their contents insured against loss, cost, damage or expense resulting from fire, explosion or any other casualty ("Casualty Insurance").

(d) Subcontractors. Unless covered as a named insured on the insurance policies purchased by LSSI pursuant to this Section 4, any subcontractor authorized in accordance with Section 7(b), below, to perform services pursuant to this Agreement on City's property shall comply with the requirements of this Section 4(a) and (b).

5. *Information, Intellectual Property and Employees.*

(a) *Information.* In the performance of this Agreement, LSSI may be exposed to information regarding the identity of City's patrons, City may be exposed to information regarding LSSI's proprietary library management techniques, and either Party may be exposed to other information designated in writing by the disclosing Party as confidential (collectively, "Confidential Information"). Each Party shall: (1) use the same care to protect the other Party's Confidential Information from disclosure that such Party uses to protect its own information of like importance; (2) limit duplication of Confidential Information to the extent needed to perform this Agreement; (3) disclose Confidential Information only to employees having a need to know in connection with performance of this Agreement, and who are informed of the contents of this provision prior to disclosure. This provision shall survive termination or expiration of this Agreement; and, on such termination or expiration, each Party shall return all Confidential Information, including all copies, to the owner of such information, and if requested, shall certify in writing that all such information has been returned. Because the damage resulting from a breach of this provision would be difficult or impossible to quantify and remedy at law, in case of such breach, or the threat of such breach, the Party whose Confidential Information is threatened to be disclosed shall be entitled to injunctive or other equitable relief.

(b) *Intellectual Property.* Nothing in this Agreement confers any license or right to use any trademark, service mark, copyright or other intellectual property right, whether now owned or hereafter developed, of either Party.

(c) *Employees.* City shall not actively solicit to hire any employee of LSSI during the term of this Agreement or for a period of six (6) months after termination or expiration of this Agreement, unless such employee previously was an employee of City.

(d) *Public Information Act Compliance.* LSSI acknowledge that City is required to comply with the provisions of the Texas Public Information Act. (Ch. 552, Tex. Govt. Code, as amended). Notwithstanding subsection (a), above, City shall not be in default of this Agreement if the Office of the Texas Attorney General directs the City to disclose information to a requestor that LSSI believes to be proprietary or confidential. In the event City receives a request for disclosure of any information identified by LSSI as confidential or proprietary pursuant to the Texas Public Information Act, City agrees to notify LSSI of such request in accordance with Tex. Govt. Code §552.305, as amended. LSSI shall be solely responsible for submitting any arguments to the Texas Attorney General in support of the LSSI's position that the information should not be disclosed to the public pursuant to Tex. Govt. Code §552.110 or any other applicable provision of the Texas Public Information Act. City shall not be required by this Agreement to file an appeal of any determination of the Office of the Texas Attorney General that information deemed by LSSI to be confidential or proprietary must be disclosed to the person requesting the information.

(e) *Release of Patron Information.* LSSI understands and acknowledges that, subject to certain exceptions, Tex. Govt. Code §552.124 makes confidential as a matter of law a record of a library supported in whole or in part by public funds that identifies or serves to identify a person who requested, obtained, or used a library material or service. LSSI agrees to indemnify, defend, and hold City harmless regarding any claims or damages by any person relating to the intentional or negligent release of Library records relating to that person in violation of federal or state law or regulation, including, but not limited to Tex.

Govt. Code §552.124. LSSI further agrees to have (i) all LSSI employees and (ii) all Library volunteers who may have access to Library user information to sign an acknowledgment and agreement regarding the treatment of Library user information on a form approved by City (which approval shall not be unreasonably withheld) prior to any such person commencing any work or service at the Library.

6. City's Obligations.

(a) *Facilities, etc.* City shall make available to LSSI without charge, solely for LSSI's use in performing the Services, all properties, facilities, equipment, collections, supplies, records, files and data used or useful in the operation of the Library that is in City's possession, custody or control as of the date hereof. City reserves all ownership rights in such properties and LSSI shall return such properties to City, ordinary wear and tear excepted, at the termination or expiration of this Agreement.

(b) *Revenue Generating Opportunities.* During the term of this Agreement, LSSI shall use reasonable efforts to develop proposals for the implementation of new revenue generating services, such as services to the business community, retail sales (books, gifts, refreshments, etc.) and other fee based services, to benefit the community, City and LSSI ("Additional Services"). City shall have the final approval of all Additional Services, with such approval to not be unreasonably withheld, conditioned or delayed. Unless otherwise approved by City, the provision of these Additional Services shall not in any way substantially reduce the space or Library services provided prior to the implementation of the Additional Services. No Additional Services shall be implemented until City and LSSI have entered a written agreement that includes, as a minimum, a written description of the Additional Services, the responsibility for costs related to providing such Additional Services, and the allocation of profit between the Parties that is generated by the Additional Services, if any.

(c) *Damage or Destruction of Library; Suspension or Termination of Agreement.* Notwithstanding Section 2(c), above, in the event of substantial damage to, or the destruction of, the Library and/or a substantial portion of the Library's collection, City may, at its sole discretion, immediately suspend the performance of this Agreement and/or terminate this Agreement upon providing written notice to LSSI. In the event this Agreement is suspended or terminated, City agrees to pay LSSI for Services rendered to the date of the suspension or termination of the Agreement pro-rated to the date of the suspension, but shall have no further obligation to LSSI. If following damage or destruction to the Library the City determines to temporarily relocate Library operations without terminating this Agreement, City and LSSI agree to negotiate in good faith the fees to be paid by City to LSSI for any reduced services provided by LSSI during such temporary period and for any additional services that LSSI provides upon the written agreement with City, if any, relating to the re-establishment of services following repair of the Library.

7. Miscellaneous.

(a) *Independent Contractors.* In all activities or services performed hereunder, LSSI is an independent contractor and not an agent or employee of City. As an independent contractor, LSSI shall be responsible for the services and the final work product contemplated under this Agreement. Except for materials furnished by City, LSSI shall supply all materials, equipment, and labor required for the work and/or services to be

provided under this Agreement. Subject to the policies established by City as provided in this Agreement, LSSI shall have ultimate control over the execution of the work and/or services. LSSI shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and City shall have no control of or supervision over the employees of LSSI or any of LSSI subcontractors. The relationship of the parties shall at all times be that of independent contractors. Nothing herein shall be construed as establishing a partnership, joint venture, agency, employment, or other relationship.

(b) *Assignment.* Neither Party may assign this Agreement to a third party not affiliated with such Party without the prior written consent of the other Party. Notwithstanding the foregoing, LSSI may subcontract or delegate portions of the Services; provided, however, in no case shall City be liable to any party other than LSSI for any amount in excess of the price specified on Schedule A, plus any additional charges permitted hereunder, nor shall LSSI be released from any obligation to comply with the provisions of this Agreement notwithstanding that performance of such provisions have been delegated to a third party. In no case shall LSSI be authorized to subcontract any of LSSI's obligations and duties pursuant to this Agreement unless such subcontract is in writing and is made expressly subject to the provisions of this Agreement. LSSI shall provide City copies of any subcontract entered pursuant to this Section 7(b) upon request of City.

(c) *Limitation of Liability.* In no case shall either Party be liable for any damages, losses, costs or expenses under or in connection with this Agreement, whether for breach of contract, tort or otherwise in excess of an amount equal to the lesser of (i) the actual damages suffered by the aggrieved Party, or (ii) the Charges for the twelve (12) month Period (as shown in Schedule A, as it may be amended) in which such damages were allegedly incurred. In no case shall either Party be liable for any punitive, exemplary, incidental, consequential, or special damages arising out of or in connection with this Agreement. Notwithstanding any other provisions of this Agreement, LSSI shall have no responsibility for any worker's compensation or any other claims for incidents or costs, expenses or losses occurring prior to the Effective Date.

(d) *Force Majeure.* LSSI shall not be liable for any failure or delay in performance of this Agreement due to causes beyond its control, including, but not limited to, strike, war or civil disturbance, weather emergency, or general failure of any necessary supply, service or utility.

(e) *City's Representation.* City represents and warrants that it has all necessary legal authority to enter into and perform this Agreement and that the person executing this Agreement on its behalf is legally authorized to do so.

(f) *Notices.* Notices required or permitted under this Agreement shall be effective upon the third (3rd) business day after deposit in First Class mail, or the next business day after deposit with a recognized overnight courier, or upon receipt if e-mailed or faxed to the respective e-mail addresses or fax numbers, if addressed to the parties' respective addresses and marked to the attention shown on the first page of this Agreement, and, if to City, a copy to the following:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N Akard, Suite 1800
Dallas, Texas 75201

Email: psmith@njdhs.com
Fax: 214-965-0010.

(g) *Governing Law; Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any suit arising from or related to this Agreement shall be brought in a state court in Dallas County, Texas.

(h) *Severability.* If any provision of this Agreement is conclusively determined to be illegal, invalid or unenforceable, then such provision shall be severed, and the remaining provisions of this Agreement shall be so construed to carry out, as nearly as legally permitted, the intentions of the parties.

(i) *Survival.* The provisions of Sections 2, 3, 4, 5 and 6 shall survive any termination or expiration of this Agreement

(j) *Entire Agreement; Amendments.* This Agreement contains the entire understanding of the parties on the subject matter hereof and supersedes all prior statements and agreements on that subject. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

(k) *Non-Waiver.* No failure or delay by either Party in enforcing any provision of this Agreement shall operate as a waiver. This Agreement may be modified or waived only in writing signed by the Party against whom such modification or waiver is sought to be enforced.

(l) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Intending to be legally bound, the parties have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARMERS BRANCH, TEXAS

By: 
Gary D. Greer
City Manager

LIBRARY SYSTEMS & SERVICES, LLC

By: 
Frank A. Pezzanite
President

Schedule A

Agreement for Library Administration and Operations

A. Statement of Work

LSSI will administer the operations of City's library facilities (collectively, "Library"), including the accounting for, purchase of and payment for payroll services and goods and services from vendors for budgeted utilities, supplies, repairs, maintenance, Library Materials (as defined below) and Capital Items (as defined below) sufficient to operate the Library in accordance with the policies and guidelines approved by City.

LSSI shall provide, by and through its own employees or independent contractors ("LSSI Staff") any labor LSSI deems necessary for the operation of the Library. The cost of the LSSI Staff shall be paid by LSSI and is included in the Operating Budget (as defined below). LSSI shall have the sole and absolute right to hire and/or terminate the employment of the LSSI Staff from time to time to perform work under this Agreement. LSSI will provide the appropriate staffing levels to keep the Library open to the public during the following periods and for the following minimal hours of operation:

Period	Hours of Operation			
	Mondays – Thursdays	Fridays	Saturdays	Sundays
January 1, 2011 to September 30, 2011	10 a.m. – 9 p.m.	10 a.m. – 6 p.m.	10 a.m. -6 p.m.	1 p.m. – 5 p.m.

In addition, LSSI will develop a long-range plan by September 30, 2011, for City in cooperation with City, elected and appointed local officials, other community stakeholders ("Plan"). Using current professional standards and practice, the Plan will identify challenges and opportunities for the LSSI Staff and corresponding strategic responses, including specific, measurable goals and objectives.

This Plan, when approved by City, will help govern the direction and focus of the LSSI Staff in fulfillment of their mission of providing effective and efficient Library service to meet the personal, professional and lifelong learning needs of the citizens served by the Library.

B. Scope of Work

1. Governance – Develop and maintain effective working relationships with local City staff, elected officials, Library board members, other appointed officials and community groups such as the Friends of the Library, members of the genealogical society, etc.
2. Fiscal Responsibility:
 - a. Develop and maintain effective and efficient financial procedures.
 - b. Review all aspects of Library operation and service for efficiency and cost-effectiveness, while making changes as appropriate.

- c. Lead preparation of annual operating and capital budget requests.
 - d. Continue to seek innovative means of adding value to City at little or no additional cost, including the procurement of grants.
3. Management and Reporting:
- a. Prepare and provide regular reports to City, describing Library activities and recommending changes in policies, procedures and operations as necessary and appropriate.
 - b. Prepare and provide timely statistical reports to the City on Library activities.
4. Staff Development and Coaching:
- a. Support orientation and professional development of all LSSI Staff.
 - b. Provide leadership and guidance to maximize LSSI Staff effectiveness in Library operations.
5. Public Services:
- a. Provide prompt, friendly and accurate assistance in the use of the Library.
 - b. Provide prompt and accurate circulation, information and reference services.
 - c. Provide requested materials promptly.
6. Collections – Provide high quality materials on a wide variety of subjects in varied formats for all age groups present in the community, according to established collection management plans.
7. Programming – Provide high quality, effective educational, recreational and cultural programs of interest to all age groups present in the community.
8. Information Technology – Develop and implement short and long range plans to procure, install and support sufficient hardware, software, network, telecommunications and other resources necessary to support the LSSI Staff's mission.
9. Marketing – Effectively disseminate information and promote use of the Library, resources and services.
10. Facilities – Work with LSSI Staff and local officials to ensure effective building maintenance by promptly identifying and reporting problems with the physical plant. Perform or caused to be performed routine janitorial and maintenance of the Library in accordance with Section 1.7 on page 20 of the Proposal.

C. Excluded Services

LSSI shall have no responsibility for administration, purchase or payment of, or any liability or duty to defend claims for:

1. Any goods or services, including payroll, that were rendered to City prior to the Effective Date.
2. Unfair labor practices, grievances, or any claims or litigation whatsoever arising out of the hiring and/or firing, layoff, subcontracting, assignment, reassignment or discipline of the Library staff not employed by LSSI, provided that such claims have not resulted from negligence or wrongful acts of LSSI under federal, state, or municipal law.
3. Any worker's compensation claims from any LSSI Staff arising from injuries sustained prior to the Effective Date if such person was employed by the City prior to the Effective Date.
4. Any costs of any voluntary retirement incentives, employee buyouts or other similar programs adopted by City.
5. Any Capital Items, which shall mean any capital acquisitions, improvements or replacements of any of the properties, facilities, equipment, furniture, furnishings, fixtures or leasehold improvements of the Library, except that such Capital Items proposed by LSSI for its benefit (i.e. coffee bar, etc.) shall be approved by City and paid for by LSSI.
6. Any amount of costs for unbudgeted repairs, maintenance and/or upkeep of Capital Items owned by City.
7. Any increases in the cost of insurance, utilities, rent, fuel and any state or federal tariff items over the rate for such items prevailing as of the date of execution of this Agreement.

D. Library Materials and Materials Handling Fee

On behalf and for the benefit of City, LSSI will negotiate favorable discounts and prices from Library suppliers for the purchase of all Library materials, which shall include books, periodicals, newspapers, microfilms, electronic database subscriptions, standing orders, audio and video materials and cases, automated reference services, binding, cataloging and processing costs and the Materials Handling Fee (as defined below) (collectively, "Library Materials"). The responsibility for Library collection development policies will remain with City, and all Library Materials selections will be the responsibility of LSSI. LSSI will place orders with the suppliers and perform the accounting functions related to those orders, including prompt payment of the invoices. In accounting for the cost of the Library Materials, LSSI shall include a fee of five percent (5.0%) of the cost of the Library Materials ordered ("Materials Handling Fee").

E. Operating Budget and Charges

Period	Charges ("Operating Budget")		Minimum Library Materials*
	Period	Monthly	
January 1 to September 30, 2011	\$873,270.00	\$97,030.00	\$105,000.00

* Total cost of Library Materials is not included in the Operating Budget and shall be determined annually by the City. LSSI will invoice the City separately for Library Materials purchased and the invoices will include the Materials Handling Fee.

The Operating Budget is contingent on other existing contractual terms, obligations and responsibilities remaining the same except as expressly noted herein.

Prior to five (5) months before the end of the last Period to which the amount of Charges have been agreed upon, the Parties shall begin to negotiate in good faith the amount of Charges that will apply to the next Period. If the Parties have not reached such agreement three (3) months before the end of such Period, then the Charges for the next twelve (12) month Period, or such fewer number of months remaining until the Expiration Date ("Remaining Months"), shall be equal to the Charge for the last month of such Period multiplied by twelve (12) or the number of Remaining Months, whichever is less, plus an additional amount equal to (a) the percentage increase in the Consumer Price Index- All Urban Consumers (Dallas-Ft. Worth: All Items) for the twelve (12) month Period prior to the commencement of the new Period not to exceed five percent (5.0%), multiplied by the charge for the last month of such prior Period, multiplied by (c) twelve (12) or the number of Remaining Months, whichever is less.