

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: May 18, 2021

Consent

Regular

Ordinance

Public Hearing

Department:

Submitted By: County Library/Administration

Submitted For: County Library/Administration

I. EXECUTIVE BRIEF

Motion & Title: Staff recommends motion to ratify a subscription agreement for the Library Department with NewsBank, Inc.

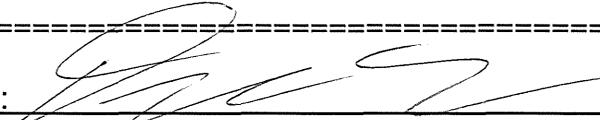
Summary: The Library Department requests a new five (5) year term contract to purchase I subscription with NewsBank, Inc. for use by the public. This agreement would provide residents with access to the Palm Beach Post (FL) Digital Archive, Palm Beach Post (FL) 2020 Digital Archive, America’s News 2021 Edition (trial) including online training, special reports and news. The agreement would start in July 2021, in the amount of \$25,000 for the first year. The vendor requires the County enter into a License Agreement that contains liability provisions different from the County’s standard requirements. The proposed agreement does not contain a cap on liability and the County would be liable for its own negligence. There is also no indemnification by NewsBank to the County. Countywide (AH)

Background and Justification: NewsBank, Inc. has been a premier information provider for more than forty-five years. Their comprehensive resources meet the diverse research needs of public libraries, colleges and universities, schools, military and government libraries, and professionals around the world. NewsBank consolidates current and archived information from thousands of newspaper titles, as well as newswires, web editions, blogs, videos, broadcast transcripts, business journals, periodicals, government documents and other publications. The Library Department uses similar databases to provide high quality electronic resources to the public for their use both in and outside library buildings.

Attachments:

- 1. NewsBank, Inc. subscription agreement

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Recommended By:  (Douglas Crane) 5.14.21
Department Director Date

Approved By:  (Todd Bonlarron) 5/14/21
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>25,000</u>	<u>25,000</u>	<u>25,000</u>	<u>25,000</u>	<u>25,000</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u><u>25,000</u></u>	<u><u>25,000</u></u>	<u><u>25,000</u></u>	<u><u>25,000</u></u>	<u><u>25,000</u></u>

ADDITIONAL FTE
POSITIONS (Cumulative) 0 0 0 0 0
Is Item Included in Current Budget? Yes x No

Budget Account No.: Fund 1180 Dept 320 Unit 3200 Object 5401

Does this item include the use of federal funds? Yes No x

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Source: Ad Valorem Tax

Impact: Minimal fiscal impact. No transfer of funds required.

C. Departmental Fiscal Review:

Alicia Harrow
(Director, Library Finance and Facilities)

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. And Control Comments:

Luz Mente 5/7/21
OFMB 5-10-21 JH RD
MG 5/6/21 5/7/21

Dr. J. Jacobson 5/14/21
Contract Dev. And Control
5-14-21 JW

B. Legal Sufficiency:

[Signature] for: Anne Helfant
Assistant County Attorney

C. Other Department Review:

N/A
Department Director



NewsBank License Agreement for Subscription & Perpetual License Sales

1. Parties, Acceptance, Master Terms for all Products

- a. This License Agreement ("Agreement") is between the institution named below, as licensee ("Customer") and NewsBank, inc., a Delaware corporation having its principal place of business at 5801 Pelican Bay Boulevard, Suite 600, Naples, Florida 34108 ("NewsBank"), as licensor. This Agreement shall become effective the earlier of (a) when NewsBank receives a copy of this Agreement signed by Customer, or (b) when Customer accepts delivery of any NewsBank or Readex digital product (the "Effective Date"). For purposes of this Agreement, delivery includes either shipment of physical goods or access by electronic means.
- b. The terms of this Agreement shall apply to all NewsBank and Readex digital products subscribed to by Customer from time to time (the "Product" or "Products"). For each Product subscribed to by Customer, there will be a corresponding NewsBank order confirmation, invoice, quotation, purchase agreement or other similar document (a "Order Form") setting forth certain additional terms specific to that Product (such as identification of Product, price, license type [subscription license or perpetual license], payment terms, whether remote use is authorized, number of concurrent users allowed, number of downloads allowed, subscription period, etc.), but the terms of this Agreement shall continue to apply. In the event of conflict between the terms of any Order Form and the terms of this Agreement, this Agreement shall govern. The terms of any document issued by Customer that add to, subtract from, or otherwise affect any term(s) of this Agreement are rejected, unless expressly agreed to by NewsBank in writing.

2. Products

- a. The Products subject to this Agreement consists of (1) the NewsBank and Readex digital products subscribed to by Customer from time to time including any trial access and (2) software provided by NewsBank to Customer to search for and retrieve data from the database(s). NewsBank may provide the Products via the Internet or remote online access through a proprietary network and/or such other media as may be available and reasonably acceptable to Customer and NewsBank.

3. License

- a. NewsBank grants to Customer and to Customers' Authorized Users (defined below) on the terms set forth in this Agreement and any Order Form(s), a non-exclusive, non-assignable, concurrent-use license to use each Product at the licensed site(s) identified in the Order Form applicable to such Product (the "Licensed Site") solely for non-commercial academic, educational and research purposes. "Authorized User" means only: (a) For public libraries: library staff, individual residents of Customer's reasonably defined geographic area served, and walk-in patrons while they are on-site; (b) For schools and other academic institutions: currently enrolled students, faculty, library staff, and visiting scholars, as well as walk-in patrons while they are on-site; and (c) For other types of organizations: employees and independent contractors, while performing their work for such organization. Customer understands and acknowledges that all use is subject, after reasonable notice, to restrictions and disclaimers that NewsBank or its suppliers publish from time to time.
- b. Customer and Customers' Authorized Users are licensed to use the Products solely for access, search, retrieval, viewing, printing, and downloading for non-commercial academic, educational

and research purposes. Printing and downloading are limited to insubstantial portions of the data, for temporary storage. All other use is prohibited. The removal or altering of any copyright or other notices within the Product or using any portion of Product for purposes of manual, automated or other machine-assisted indexing or classification of other publications is prohibited. The transmission of Content, as defined under Section 5a, (including, but not limited to, by way of e-mail, facsimile or other electronic means) is prohibited unless such transmission is between Authorized Users. Except as expressly provided for in this Agreement, Customer and Customers' Authorized Users may not modify, publish, transmit (including, but not limited to, by way of e-mail, facsimile or other electronic means), display, participate in the transfer or sale of, create derivative works based on, or in any other way exploit any of the Content, in whole or in part without the prior written consent of NewsBank and (if applicable) its respective content providers.

- c. Customer will take reasonable steps to ensure that only Customer's Authorized Users use the Products, and that Customer's Authorized Users do so in accordance with this Agreement.
- d. Portions of this Agreement relevant to Authorized Users may appear in the form of "Terms and Conditions of Use" on or in the Products.

4. Express Restrictions

- a. **On-Site Use:** Customer may make each Product available for authorized use at the Licensed Site over a computer network to the number of concurrent users or number of downloads listed in the Order Form for the relevant Product.
- b. **Remote Use:** Customer, if granted a remote-use license, defined in the Order Form for the relevant Product, may make such Products available to Customer's Authorized Users who are not at the Licensed Site; provided that such availability is limited to non-commercial academic, educational and research use by the number of concurrent users or number of downloads set forth in the Order Form(s) for the relevant Product(s), and is further subject to the following conditions:
 - i. Authorized Users must access the Products only through the server or network located at the Licensed Site and Customer's server or network must have adequate security to allow access to the remote access account setup by NewsBank only by Authorized Users.
 - OR**
 - ii. Authorized Users must access the Products only through user authentication programs supplied to Customer by NewsBank.

In no event may Remote Access be used to avoid the need for any school, library, or other potential customer from subscribing to a Product. If NewsBank reasonably determines that Remote Access activities hereunder may be impairing NewsBank's ability to make sales of the Product or other NewsBank products to other customers or other potential customers of NewsBank, NewsBank may require such Remote Access activity to be modified or terminated, either entirely or with respect to the Customer's Authorized User(s) whose activity is impairing NewsBank's business.

- c. Without limiting any other restriction on use set forth in this Agreement, the following limitations apply to make sure that all use is for non-commercial academic, educational and research purposes and will not impair NewsBank's ability to market/license its products to other customers or other potential customers:

- i. Any permitted remote access is limited to use by Authorized Users through their personal computers/devices for their own convenience and specifically excludes Authorized Users who access the Products through another school, library, college/university, corporation, business or other potential customer of NewsBank. Customer is specifically prohibited from granting any remote access to any entity including, but not limited to, any school, library, college/university, corporation, business or organization.
- ii. Customer shall not provide any material from any Product to fulfill an interlibrary loan request from another library or organization.

5. Intellectual Property

- a. Customer acknowledges that the Products consist of materials copyrighted by third parties and containing trademarks owned by third parties, and that NewsBank owns the copyright of the compilations of these materials. The Product contains copyrighted material, trademarks and other proprietary information owned by NewsBank and its content providers, including without limitation, compilations, text, software, photographs, video, graphics, trademarks, service marks, logos, designs, and music and sound (the "Content"), and such Content is protected under U.S. copyright laws, U.S. trademark laws, and other intellectual property laws as well as international copyright and trademark laws and treaties. Customer acknowledges that its use of the Products, including use by Customer's Authorized Users, must not infringe the rights of NewsBank or of any third parties.
- b. Consistent with the fair-use provisions of the Copyright Act of the United States, Customer and Customer's Authorized Users are licensed to reproduce or store only insubstantial portions of the Products, resulting from specific searches for Customer's and/or Authorized Users' own non-commercial academic, educational and research purposes. Customer and Customer's Authorized Users will not store or use, or allow to be stored or used, any portion of the Products in a searchable database without written permission of NewsBank and (if applicable) its respective content providers or data/text mine or permit data/text mining of the Product. Nothing contained herein shall be construed as granting the Customer and its Authorized Users or any third party any interest in or to the Product or Content. All rights in and to the Product and Content are expressly reserved by NewsBank and/or NewsBank's respective content providers.

6. Warranty, Liability, Indemnity

- a. NewsBank and its respective content providers do not warrant that use of the Products will be uninterrupted or error-free.
- b. NewsBank and its content providers do not warrant the accuracy or completeness of the Products, or results obtained by using them. NewsBank disclaims liability for any offensive, defamatory, or infringing materials in the Products.
- c. Customer will take reasonable steps to ensure that Customer's Authorized Users will use the Products according to the terms of this Agreement, and that they will not bypass, or attempt to defeat, NewsBank's or Customer's security measures preventing unauthorized use of the Products.
- d. To the extent allowed by Florida law (including Florida Statute 768.28 as applicable) and without waiving the right to sovereign immunity, the Customer shall be liable for any losses, claims, damages, awards, penalties and/or injuries incurred, including reasonable attorney's fees (if so

ordered by a court of competent jurisdiction), arising from the Customer's negligence or failure to comply with the terms and conditions of this Agreement.

- e. NEWSBANK AND ITS CONTENT PROVIDERS DISCLAIM ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- f. To the extent allowed by law, neither NewsBank nor its content providers will be liable for consequential or punitive damages, even if notified of their possibility.

7. Term, Termination and Perpetual License (As Applicable)

- a. This Agreement will be in effect as of the Effective Date and continue to be in effect for each Product trial and/or subscription period mutually agreed to by the parties for that Product unless earlier terminated for cause. The parties mutually agree that any Order Form under this Agreement will not exceed a 5-year term. NewsBank may terminate this Agreement for an uncured breach on thirty (30) days' notice. Sections 5a and 8 shall survive termination.
- b. Perpetual License: If Customer pays a one-time fee for a perpetual license defined in the Order Form for the relevant Product, except for termination for cause, NewsBank grants to Customer a nonexclusive, royalty-free, perpetual license to the Product, provided that the parties shall have agreed on fees for such use pursuant to a Order Form and such fees have been paid. Such use shall be in accordance with the provisions of this Agreement. In connection with a perpetual license, the Customer shall have the following archival copy options provided Customer has not breached the terms of this Agreement:
 - i. If for any reason, NewsBank or any successor to NewsBank ceases to provide permanent online access to the Product, NewsBank or such successor to NewsBank shall provide Customer or its NewsBank-approved designee, at Customer's cost, with an archival copy of the Product data (images & ASCII database) as of the date of discontinuance of online service, in a mutually agreeable electronic format (Customer to provide its own search engine), use of which shall be subject to this Agreement. Customer may not sell or otherwise transfer ownership of any physical media in which any Product may be delivered.
 - ii. NewsBank will allow the Customer to purchase a magnetic tape load (or other mutually agreed on technology) of the Product data (images & ASCII database) provided under this Agreement at anytime during the subscription period or within 60 days of cancellation or non-renewal, but not upon termination for breach, which the Customer can either archive or load onto a local server to be accessed by the Customer's own search and retrieval software. Customer and Customer's Authorized Users may use the archive as provided for in this Agreement. In no event shall Customer (1) make the archival copy available to any third party, or (2) data/text mine or permit data/text mining of the Product without prior written approval from NewsBank.

8. Disputes

- a. This document, including any Order Form(s), is the entire Agreement between the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. With the exception of changes made to the Order Form(s), this Agreement may be modified only in writing, signed by both parties. A party's failure to

exercise a right under this Agreement will not waive its other rights. Any provision found to be unenforceable will be construed for maximum effect, and will not impair the other provisions. Each third party content provider of Content has the right to assert and enforce these provisions directly on its own behalf as a third party beneficiary.

- b. Disputes will be subject to Florida law (without giving effect to its choice-of-law provisions). The parties mutually agree that all disputes between them will be decided exclusively in the state and/or federal courts of Palm Beach County, Florida if the Customer is the defendant and Naples, Florida if NewsBank is the defendant. Customer will accept service of process of any complaint by certified United States postal mail or its domestic or foreign equivalent.

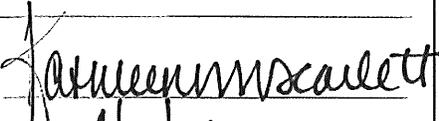
9. Other Provisions

- a. NewsBank hereby certifies that they are currently compliant and will remain compliant with Section 448.095 of the Florida Statutes with regards to the required use of E-Verify.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

/s/ Anne Helfant

Customer Legal Counsel

<p>NewsBank Customer</p> <p>Institution: <u>Palm Beach County on behalf of the Palm Beach County Library System</u></p> <p>Authorized by:</p> <p>Name: <u>Kathleen M. Scarlett</u></p> <p>Title: <u>Director</u></p> <p>Signature: <u></u></p> <p>Date: <u>4/11/21</u></p>	<p>NewsBank, inc.</p> <p>Authorized by:</p> <p>NewsBank Employee: <u>John McDowell</u></p> <p>Employee Title: <u>Senior Vice President</u></p> <p>Employee Signature: <u></u></p> <p>Date: <u>4/6/2021</u></p>
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