PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: December 21,2021	[X] Consent [] Ordinance	[] Regular [] Public Hearing		
Department: Submitted By:	County Library/Admi	nistration		
Submitted For:	County Library/Administration			

I. EXECUTIVE BRIEF

Motion & Title: Staff recommends motion to approve a subscription agreement between Palm Beach County and ProQuest LLC, for a (1) year term beginning on January 1, 2022, with renewal options not to exceed five years, in the amount of \$6,615 each year.

Summary: The Library Department requests a new (1) year term contract with 4 additional 1 year renewal options to purchase a subscription with ProQuest LLC, for use by the public. This agreement would provide residents with access to full replicas of The Palm Beach Post, Palm Beach Daily News, Sun Sentinel, Miami News, Tampa Tribune, Florida Today, Orlando Sentinel, Pensacola News Journal, News-Press, Tallahassee Democrat, Daily Times, Citizen-Times, Daily News Journal, Jackson Sun, Leaf-Chronicle, News Leader and Daily Press. The agreement would start on January 1, 2022 in the amount of \$6,615.00 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. Except for liability arising from or relating to ProQuest's gross negligence, willful misconduct, and ProQuest's indemnification obligations. ProQuest's limitation of liability is limited to \$100,000. ProQuest is not liable for (i) any indirect, incidental, consequential, punitive or special damages: or (ii) any claim related to customer's or its authorized users' use of cover images or user-generated content provided as part of the service; or (iii) unauthorized use of the service. Risk Management and the County Attorney's Office have approved this subscription agreement. <u>Countywide</u> (AH)

Background and Justification: ProQuest LLC, has been a premier information provider for more than eighty-three 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. ProQuest provides access to content, including dissertations, theses, ebooks, newspaper, periodicals, historical collections, governmental archives, cultural archives, and other aggregated databases. 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. ProQuest LLC, subscription agreement

Recommended By:	Tart	(Douglas Crane)	2.6.21
	Department Director		Date
Approved By:	Assistant County Administrator	(Todd Bonlarron)	12/20/202 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures Operating Costs External Revenues Program Income (County) In-Kind Match (County)	0 6615 0 0 0	0 6615 0 0 0	0 6615 0 0 0	0 6615 0 0 0	0 0 0 0
NET FISCAL IMPACT	6615	6615	6615	6615	<u>6615</u>
# ADDITIONAL FTE POSITIONS (Cumulative) Is Item Included in Current Bu	0 udget?	0	0 Yes x	0 No	0
Budget Account No.:	Fund 1180	Dept 320	Unit 3200 C)bject 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:

(Director, Library Finance and Facilities)

III. REVIEW COMMENTS:

- B. Legal Sufficiency:

For A. Helfart 12/20/21 Assistant County) ttorney

C. Other Department Review: N/A Department Director

This summary is not to be used as a basis for payment.

ADM FORM 01

License Agreement consists of: ProQuest Customer Order Form Custom Terms and Conditions sld 7/21/21 Addenda (if applicable)



By signing this License Agreement ("Agreement") with your signature below, you agree to license the Service under these terms and conditions below and you certify that you are authorized to enter into this Agreement on behalf of the Customer.

Customer:	Palm Beach County			
Authorization by Customer:		Authorization by ProQuest LLC:		
Signature:		Signature:	Dawn Branham	
	Duly Authorized Signature		124080430320470	
Name:		Name:	Dawn Branham	
Title:		- Title:	Director, Customer Service	
Date Signed:		Date Signed:	28 October 2021	

				Q-00484501
Product Name	Code	Start Date	End Date	Price
Historical Newspapers: Southeast Regional Collection - SUB	HNSERC	1/1/2022	12/31/2022	6,615.00 USD
			Total	Price: 6,615.00USD

Product Notes:

Additional Information:

Billing Information: Shipping Information: Please review your billing address to ensure its accuracy. Please confirm the shipping address is accurate. **Palm Beach County Palm Beach County** 4289 Cherry Rd West Palm Beach FL United States 3650 Summit Blvd West Palm Beach FL United States 33409-6049 33406-4198 Electronic Invoice Recipient(s): Electronic Renewal Recipient(s): If your subscribing institution requires the use of Purchase Tax Registration Number # Orders, please indicate below. If tax exempt, please include copy of supporting Purchase Order # documentation with signed agreement or email a copy to taxinformation@proquest.com Approved tions ty levus C.

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APPROVED AS TO FORM AND LEGAL SUFFICIENCY Page **1** of **8** COUNTY ATTORNEY

Invoices will be emailed to the bill-to- contact and renewals will be emailed to the ship-to-contact. If your institution is unable to accept electronic invoices, please check this box:		To sign up for our auto-renewal program as part of our 'go green' initiative, please check this box: Your subscription to the service will automatically renew for successive 12 month periods at the rate set forth in the renewal invoice sent to the Customer, unless Customer sends written cancellation notice to ProQuest within 30-days of the Customer's receipt of the renewal invoice, with such cancellation to be effective as of the end of the current subscription period.			
Technical Contact:		Phone:	Em	ail:	
IP Authentication:	Barcoc	le Scheme:	Alternative Authentication:	LIBCODE	
Authentication Instructions:	Length: Prefix:				

Account Manager Information:

Hank Dreffs

Additional Sites:

| hank.dreffs@proquest.com

Custom Terms and Conditions

- 1. <u>License Grant.</u> Subject to the terms of this Agreement, ProQuest LLC and its affiliates ("ProQuest") hereby grant to Customer a non-exclusive, non-transferable license (the "License") for Customer and its Authorized Users to access and use the products and services listed on Customer's approved Order Form (the "Service") solely at Customer's principal location and those locations identified on the Order Form or a separate schedule ("Additional Sites"). Additional locations may be added as Additional Sites upon written notice to ProQuest and payment of additional fees, if applicable. Access and use of the Service is only for the internal, research purposes of Customer and/or its Authorized Users as further described in Exhibit A (Permitted Uses). Customer does not acquire any intellectual property ownership in the Service or any associated software, systems, documentation, content, other materials and/or improvements made thereto, including improvements based upon customer feedback. All such rights and interests remain in ProQuest and its licensors.
- <u>Authorized Users.</u> Unless otherwise detailed on the Order Form, "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, 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. Authorized Users excludes Customer's corporate affiliates, academic bookstores, and alumni unless those users are expressly included and reflected on the Order Form or Additional Sites Schedule.
- 3. <u>Secure/Remote Access.</u> All access and use of the Service must be made via a secure network and secure authentication methods. Use of the Service by remote access is allowed unless

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otherwise stated on the Order Form. Customer will strictly limit any remote access to its Authorized Users through the use of secure methods of user verification. Customer will promptly notify ProQuest if Customer believes security has been compromised. Posting or sharing of passwords, or otherwise enabling access for the benefit of non-subscribing institutions or users, is strictly prohibited.

- 4. <u>Updates to the Service.</u> ProQuest will provide reasonable notice of any substantial modifications of information, databases, materials, capabilities, or services within the Service by email to Customer's representatives who sign up to receive updates. These changes shall be subject to the terms and conditions of this Agreement, and shall not materially alter use of the Service in an adverse manner.
- 5. <u>Supplemental Terms.</u> Some content included in the Service has terms of use applicable solely to such content. Content-specific terms are clearly displayed with the associated content or embedded in the systems and technologies incorporated into the Service. Where third-party databases or content are subject to supplemental terms, such terms shall be clearly referenced on the Order Form. Such supplemental terms shall not materially alter use of the Service.
- 6. <u>Variations in Content.</u> The content provided as part of the Service is primarily owned and supplied to ProQuest under agreement with third party licensors, and is subject to the continuation and extent of the license granted under such agreements. ProQuest shall have the right, in its reasonable and good faith discretion, to remove or modify materials in the Service because (a) ProQuest's right to distribute such materials lapses, (b) such materials contain errors or could be subject to an infringement or other adverse claim by a third party, or (c) particular content collections have changed due to editorial selection, coordination, or arrangement of materials.
- 7. <u>Fees and Payments.</u> Customer agrees to pay the fees for the Service shown on the Order Form within 45 days of receipt of ProQuest's invoice unless otherwise specified on the Order Form. Fees are based in part on Customer's population served, Authorized Users and Additional Sites at the time of the order or such other license parameters as may be listed on the Order Form. If any one or a combination of these elements materially increases (*e.g.*, if the Customer acquires a new affiliate), a fee increase commensurate with such change may be required before access and use of the Service is provided to or for the benefit of the additional user population and/or Additional Sites. Firm U.S. Government orders require a valid purchase order and advance payment or payment in accordance with FAR 52.213.2.
- 8. U.S. Government Restricted Rights. Services include materials that are commercial technical data and/or computer databases and/or commercial computer software, as applicable, which were developed exclusively at private expense by ProQuest LLC, 789 E. Eisenhower Parkway, Ann Arbor, MI 48108. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer databases and/or computer software are subject to the limited rights restrictions of DFARS SUBPART 252.227-7202-3 (December 2011) Rights in Computer Software and Computer Software Documentation and/or subject to the restrictions of DFARS 252.227-7019 (Sep 2011) Validation of Asserted Restrictions Computer Software, as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) Rights in Data-General, FAR 52-227-20(c)(2-3) (December 2007) Rights in Data-SBIR Program and/or subject to the restricted rights Data and Restricted Computer Software and FAR 52.227-19 (Dec 2007) Commercial Computer Software.

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Restricted Rights, as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurement.

- 9. <u>Term.</u> This Agreement will be in force for a period of one (1) year with four (4) one-year renewal periods initiated by mutual written agreement of the parties thirty (30) days prior to termination. Customer's access to a particular Service shall continue for the period on the Order Form, plus any agreed renewal period(s). This Agreement shall continue in force for so long as Customer subscribes to at least one Service. Thereafter, the following survive: Sections 9–11 and 13-16, and any perpetual archive licenses ("PAL") (subject to all relevant use restrictions and security requirements).
- 10. <u>Termination for Breach.</u> If a party breaches a material term of this Agreement and does not cure within 30 days from written notice, the other party may immediately terminate this Agreement in whole or as to the affected Service. If this Agreement is terminated in whole or in part for Customer's breach, (a) ProQuest shall disable access to any terminated Service, (b) Customer shall destroy any files, information, data or software derived from any terminated Service in its possession or control, and certify destruction upon request, and (c) ProQuest reserves the right to pursue all available legal remedies.
- 11. <u>Remedial Action.</u> Without limiting the above, ProQuest may suspend delivery of the Service if it reasonably determines that Customer's or an Authorized User's failure to comply with this Agreement may cause irreparable harm to it or its licensors. If delivery is suspended, ProQuest will work in good faith to restore Customer's access as soon as possible after the failure to comply has been remedied in full.
- 12. <u>Service Level.</u> If the Service or content are hosted by ProQuest, ProQuest will use commercially reasonable efforts to provide access to the Service on a continuous 24/7 basis (except for regularly scheduled maintenance) and free from viruses or other harmful software. ProQuest shall not be liable for any failure or delay or interruption in the Service or failure of any equipment or telecommunications resulting from any cause beyond ProQuest's reasonable control. Customer is responsible for providing all required information for account set up and activation, and for its own telecommunications connections and related third-party charges.
- 13. Limited Warranty and Disclaimer of Warranty. ProQuest warrants that the Service will perform substantially as documented on ProQuest's public websites (the "ProQuest Websites"). EXCEPT AS EXPRESSLY WARRANTED HEREIN, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." PROQUEST AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE PERTAINING TO: MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ACCURACY, TIMELINESS, CORRECTNESS, RELIABILITY, CURRENCY, OR COMPLETENESS OF THE SERVICE OR ANY INFORMATION OR RESULTS OBTAINED THROUGH THE SERVICE, EVEN IF ASSISTED BY PROQUEST. PROQUEST SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY PROQUEST WITH THE SERVICE AND PROVIDES NO WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE SERVICE.
- 14. Indemnity and Limitation of Liability
 - a. <u>ProQuest shall indemnify and hold Customer harmless from liability for all costs or</u> damages incurred by Customer in any action or threatened action for infringement of an intellectual property right of a third party, relating to or caused by the Service in the form in which it is furnished hereunder, provided that Customer gives ProQuest notice of any suit

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or threatened suit for infringement brought within twenty (20) days of the day of service of the complaint upon Customer or from the receipt by Customer of notice of a threatened suit and further provided that ProQuest shall control the defense of any such suit. ProQuest shall not be liable hereunder if (i) any infringement or violation claim is based solely upon the use of the Service in combination with programs, equipment or devices not of ProQuest origin, design or selection; or (ii) any infringement or violation claim arises out of use of the Service in a manner contrary to the rights granted in this Agreement, including use contrary to the Copyright Act of 1976, Title 17 U.S.C. or other intellectual property law.

- b. EXCEPT FOR LIABILITY ARISING FROM OR RELATING TO PROQUEST'S GROSS <u>NEGLIGENCE, WILLFUL MISCONDUCT, AND PROQUEST'S INDEMNIFICATION</u> <u>OBLIGATIONS UNDER 14(a), THE MAXIMUM LIABILITY OF PROQUEST AND ITS</u> <u>LICENSORS ARISING OUT OF ANY CLAIM RELATED TO THE SERVICE OR THIS</u> <u>AGREEMENT SHALL BE LIMITED TO \$100,000. IN NO EVENT SHALL PROQUEST OR</u> <u>ITS LICENSORS BE LIABLE TO CUSTOMER OR ITS AUTHORIZED USERS FOR (i)</u> <u>ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES;</u> <u>OR (ii) ANY CLAIM RELATED TO CUSTOMER'S OR ITS AUTHORIZED USERS' USE</u> <u>OF COVER IMAGES OR USER-GENERATED CONTENT PROVIDED AS PART OF THE</u> <u>SERVICE; OR (iii) UNAUTHORIZED USE OF THE SERVICE.</u>
- b.
- 14. <u>Place.</u> ProQuest's principal place of business, where this contract is formed and all services will be deemed performed, is 789 E. Eisenhower Pkwy, Ann Arbor, MI 48108.
- 15. <u>Entire Agreement.</u> This Agreement consists of these Terms and Conditions, any applicable Order Form referencing these Terms and Conditions, and any Exhibits or Addenda attached hereto or referencing this Agreement (including the Exhibit A (Permitted Uses), and constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes all previous and contemporaneous agreements between the parties with respect to the same subject matter and may not be amended, except in a writing signed by the parties. The terms of Customer's purchase orders, if any, are for Customer's convenience and do not supersede or supplement any term or condition of this Agreement.

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Exhibit A: Permitted Uses

- 1. <u>Online Research Services.</u> Services designed to facilitate online research may be used for Customer's internal research or educational purposes as outlined below provided that doing so does not violate an express provision of this Agreement:
 - <u>Research and Analysis</u>. Customer and its Authorized Users are permitted to display and use reasonable portions of information contained in the Service for educational or research purposes, including illustration, explanation, example, comment, criticism, teaching, or analysis.
 - b) <u>Digital and Print Copies.</u> Customer and its Authorized Users may download or create printouts of a reasonable portion of articles or other works represented in the Service (i) for its own internal or personal use as allowed under the doctrines of "fair use" and "fair dealing"; (ii) when required by law for use in legal proceedings or (iii) to furnish such information to a third party for the purpose of, or in anticipation of, regulatory approval or purpose provided that the recipient is advised that the copies are not for redistribution. All downloading, printing and/or electronic storage of materials retrieved through the Service must be retrieved directly from the on-line system for each and every print or digital copy.
 - c) <u>Electronic Reserves, Coursepacks, and Intranet Use.</u> Provided that Customer does not circumvent any features or functionality of the Service, Customer may include durable links to articles or other works (or portions thereof) contained in the Service in electronic reserves systems, online course packs and/or intranet sites so long as access to such materials are limited to Authorized Users.
 - d) <u>Fair Use/Fair Dealing</u>. Customer and its Authorized Users may use the materials contained within the Service consistent with the doctrines of "fair use" or "fair dealing" as defined under the laws of the United States or England, respectively.
 - e) <u>Academic Institutions, Schools, and Public Libraries.</u> If Customer is an academic institution, school, or public library:
 - i. <u>Interlibrary Loan (ILL)</u>. Library Customer may loan digital or print copies of materials retrieved from the Service to other libraries, provided that (i) loans are not done in a manner or magnitude that would replace the receiving library's own subscription to the Service or purchase of the underlying work (*e.g.*, newspaper, magazine, book), (ii) Customer complies with any special terms governing specific content or licensors as described in this Agreement, (iii) with respect to ebooks, copying is limited to small portions of a book, and (iv) Customer complies with all laws and regulations regarding ILL.
 - ii. <u>Scholarly Sharing.</u> Customer and its Authorized Users may provide to a third party colleague minimal, insubstantial amounts of materials retrieved from the Service for personal use or scholarly, educational research use in hard copy or electronically, provided that in no case is any such sharing done in a manner or magnitude as to act as a replacement for the recipient's or recipient educational institution's own subscription to either the Service or the purchase of the underlying work.
- <u>All Streaming Video and Audio Products</u>. Audio and Video files are delivered to Customer and its Authorized Users via streaming service over the Internet. Customer and its Authorized Users shall not download or otherwise copy the streaming videos or audio contained in the Service. In the case of content that can potentially be publicly performed, Customer must secure permission from ProQuest's Licensor and/or the copyright holder for any public performance other than reasonable classroom and educational uses.

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- 3. <u>MARC Records.</u> MARC records may be placed in Customer's online public access catalog (OPAC) or shared online catalog (*e.g.*, WorldCat) unless otherwise specified on the Order Form with respect to a particular Service.
- 4. <u>Scholar/Researcher Profiles.</u> The data contained within scholar profiles are for use in facilitating research and collaboration amongst colleagues. Neither Customer nor its Authorized Users may export or otherwise exploit the scholar profiles for mass mailings or similar marketing purposes.
- 5. Electronic Resource Discovery, Access, and Management. For electronic resource discovery (e.g., Summon, 360 Link), access and/or management services, the Customer reserves all right, title and interest in all Customer specific data it contributes to the Service (which may include but is not limited to Customer created metadata, bibliographic information, holdings and circulation data) and grants ProQuest permission to use such data in raw form for the limited purpose of operating and improving the Service and such information may only be provided to third parties in aggregate form. Raw usage data containing information relating to the identity of specific users shall not be provided to any third party without Customer's permission. Provided that such access, use, and/or sharing does not violate an express provision of this Agreement, Customer and its Authorized Users are permitted to: (a) access the Service and information derived from the Service in order to discover, manage and provide access to library resources owned or licensed by Customer, (b) create, store and retain any reports and lists delivered by the Service, (c) share data about Customer's own library holdings that is retrieved from such Service with third party applications, so long as prior written notice is provided to ProQuest and all pricing information is kept confidential to the fullest extent permitted by applicable law; and (d) display metadata, bibliographic and holdings information in the library catalog available on Customer's library website.
- 6. <u>Library Catalog Enrichment Service</u>. For library catalog enrichment Services (*e.g.*, Syndetics), Customer may use the enrichment elements for the sole purpose of augmenting Customer's own library OPAC or website. Customer may not convert Service metadata records into MARC format, nor distribute or display the enrichment elements in any third party applications, catalogs or websites.
- Purchased Content. For perpetual archive licenses ("PAL") (as specified on the ProQuest Websites or Order Form), Customer pays a one-time fee for a perpetual license to the designated materials (the "Purchased Content"), and an annual "Continuing Service Fee."
 - a) <u>Perpetual License.</u> The License to Purchased Content and any updates Customer receives is perpetual, and may only be revoked if Customer materially breaches this Agreement, or if the licensed materials contain errors or could be subject to an infringement or other adverse claim by a third party.
 - b) <u>Continuing Services.</u> In consideration of the Continuing Service Fee, ProQuest will provide Customer and its Authorized Users with online access to the Purchased Content, plus any included updates, on a proprietary platform designed to enhance the research experience (a "ProQuest Platform"). ProQuest will maintain systems and technology that help Customer comply with use restrictions and security standards required by ProQuest's licensors.
 - c) <u>File Delivery.</u> If Customer loses the ability to access its Purchased Content online through ProQuest (*e.g.*, if ProQuest discontinues online access services), or if the Purchased Content is otherwise eligible for local loading, Customer may obtain digital copies upon certifying that it will secure and restrict use of the Purchased Content as contemplated under this Agreement, using systems and technology at least as protective as ProQuest's. In the case of Audio, any local access must be restricted by DRM and be limited to one (1) simultaneous user (unless the Customer tracks the necessary playbacks and makes all royalty payments to copyright holders for

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mechanical and performance rights). All use of the materials delivered continue to be subject to this Agreement. File transfer costs, if any, are Customer's responsibility.

- d) <u>Locally Loaded Purchased Content Data Mining.</u> Subject to any content-specific restrictions, Customer and its Authorized Users may extract and compile data from locally-loaded copies of the Purchased Content solely for Customer's teaching, learning, and research purposes.
- Acquisition Models. For certain Services, Customer may elect to have user activity trigger the purchase of content. Purchase preferences and Service eligibility for these models are described on the ProQuest Websites. Examples of these types of purchase models include Patron Driven Acquisition (PDA), Demand Driven Acquisition (DDA), Evidenced Based Acquisition, Access-To-Own (ATO), and Build By Choice.
- 9. <u>Analytics.</u> Some Services contain library collection analysis capabilities related to library holdings, or functionality that allows Authorized Users to create reports, lists, or alerts. Customer and Authorized Users may create, download, store and retain any such analytics or lists delivered by the Service. ProQuest may use library holdings and other information in the Service for comparison and metrics purposes and in order to better understand the customers' needs.
- 10. <u>Restrictions.</u> Except as expressly permitted above, Customer and its Authorized Users shall not:
 - a) Translate, reverse engineer, disassemble, decompile, discover, or modify ProQuest's software;
 - b) Remove any copyright and other proprietary notices placed upon the Service or any materials retrieved from the Service by ProQuest or its licensors;
 - c) Circumvent any use limitation or protection device contained in or placed upon the Service or any materials retrieved from the Service;
 - d) Perform penetration tests or use the Service to execute denial of service attacks;
 - e) Perform automated searches against ProQuest's systems (except for non-burdensome federated search services), including automated "bots," link checkers or other scripts;
 - f) Provide access to or use of the Services by or for the benefit of any unauthorized school, library, organization, or user;
 - g) Publish, broadcast, sell, use or provide access to the Service or any materials retrieved from the Service in any manner that will infringe the copyright or other proprietary rights of ProQuest or its licensors;
 - h) Use the Service to create products or perform services which compete or interfere with those of ProQuest or its licensors;
 - i) Text mine, data mine or harvest metadata from the Service;
 - j) Communicate or redistribute materials retrieved from the Service; or
 - k) Download all or parts of the Service in a systematic or regular manner or so as to create a collection of materials comprising all or a material subset of the Service, in any form.
 - I) Store any information on the Service that violates applicable law or the rights of any third party.

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PALM BEACH COUNTY PURCHASE ORDER/TERM CONTRACT STANDARD TERMS AND CONDITIONS

The following Terms and Conditions are applicable to this purchase order/contract entered into by and between Palm Beach County (referred to as County) and Vendor.

VENDOR REGISTRATION

In order to do business with Palm Beach County, vendors are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system which can be accessed at https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService. If vendor intends to use subcontractors, vendor must also ensure that all subcontractors are registered as vendors in the VSS system. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in the VSS system. The County will not finalize a contract award until the County has verified that the contractor and all of its subcontractors are registered in the VSS system. It is the vendor's sole responsibility to routinely check our VSS system for any amendments that may have been issued prior to the deadline for receipt of submissions. Palm Beach County shall not be responsible for the completeness of any solicitation that was not downloaded from the VSS system or obtained directly from the Purchasing Department.

MODIFICATIONS

No modifications of this order/contract, including but not limited to these terms and conditions, shall be binding upon County unless approved by an authorized representative of County's Purchasing Department.

ASSIGMENTS

Assignments are prohibited unless prior written consent is given by the County and the Vendor except that Vendor may without County's consent, assign this contract to a subsidiary, affiliate, parent, or in connection with a merger, consolidation or sale of all or substantially all of Vendor's assets.

EXCUSABLE DELAYS

The County may grant additional time for any delay if the delay will not adversely impact the best interest of the County and is due to causes beyond the control of the Vendor. Such grant must be in writing and made part of the order/contract.

DEFAULT

The County may, by written notice of default to the successful vendor, terminate the order/contract in whole or in part if the successful vendor fails to satisfactorily perform any <u>material</u> provisions of this solicitation or resultant order/contract, or fails to make progress so as to endanger performance under the terms and conditions of this solicitation or resultant order/contract, or provides repeated non-performance, <u>and does not remedy such failure within a period of thirty (30) days (after receipt of notice from the Director of Purchasing specifying such failure).</u>

If this Agreement is terminated in whole or in part for ProQuest's breach, ProQuest shall issue Customer a pro-rata refund of pre-paid fees corresponding to the unused balance of the subscription term as its sole and exclusive remedy. Upon termination, each party reserves the right to pursue all available legal remedies.

If it is determined that the successful vendor was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of, the successful vendor), the rights and obligations of the parties shall be those provided in the provision "Termination For Convenience".

TERMINATION FOR CONVENIENCE

The County may, whenever the interests of the County so require, terminate the order/contract, in whole or in part, for the convenience of the County upon five (5) days written notice to Vendor. Unless directed otherwise in the notice of termination, the Vendor shall incur no further obligations in connection with the order/contract. Any early termination for the County's convenience shall not obligate the Vendor to refund any pre-paid fees.

REMEDIES

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law, or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

NO THIRD PARTY BENEFICIARY

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the County and/or successful vendor.

FOB

The F.O.B. point shall be destination. If the County agrees, freight charges may be prepaid by the Vendor and listed on the invoice; however, Vendor retains title and assumes all responsibility, liability and risk in transit, and shall be responsible for the filing of claims for loss or damages.

PAYMENT TERMS

The Florida Prompt Payment Act is applicable to this solicitation. Interest penalties will only be paid in accordance with the Florida Prompt Payment Act, Florida Statute 218.70.

In order for Palm Beach County to make payment, the Vendor's Legal Name; Vendor's Address; and Vendor's TIN/FEIN Number on the Vendor's offer; must be exactly the same as it appears on the invoice and in Palm Beach County's VSS system which can be accessed at <u>https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService</u>

Note: Palm Beach County Vendors can now be paid by Credit Card via the County's <u>voluntary</u> Payment Manager Program. For vendors who don't have a merchant account, one is needed to utilize the Program. For vendors with a merchant account, you will need to enroll with the Palm Beach County Clerk & Comptroller's office. For information, contact the Palm Beach County Clerk & Comptroller at <u>pbcpaymentmgr@mypalmbeachclerk.com</u>.

INVOICING

Vendor shall send ALL ORIGINAL invoices to the following address and may send copies of invoices to the respective Palm Beach County Department requesting the goods/services. Invoices submitted on carbon paper shall not be accepted.

402-4036

TAXES

The County is exempt from Federal and State taxes.

PURCHASE ORDER

The County will not accept any goods delivered or services performed unless a duly authorized purchase order has been issued for said goods and/or services. The purchase order number must appear on all invoices, packing slips and all correspondence concerning the order.

ORDER/CONTRACT

Vendor agrees that by submitting an offer which is accepted by the County a binding contract is formed in accordance with the County's terms, conditions and specifications and as set forth in the Vendor's License Agreement. Vendor certifies that the offer has been made by an officer or employee having the authority to bind the Vendor.

PRICING

Prices shall remain firm for the initial term listed on the Order Form.

DELIVERIES

Deliveries are to be made Monday through Friday, excluding holidays, unless otherwise stipulated.

INSPECTION/ACCEPTANCE

All goods and/or services provided on this Purchase Order are subject to inspection and acceptance upon receipt or completion by an authorized representative of the County. Payment shall not be authorized until the goods and/or services have been received, accepted and properly invoiced.

QUANTITIES

Quantities specified in the order/contract cannot be changed without County approval. Goods shipped in excess of quantity designated may be returned at Vendor's expense.

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COMMERCIAL NON-DISCRIMINATION:

a. VENDOR'S REPRESENTATIONS AND AGREEMENT:

The Vendor represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770 as amended. As part of such compliance, the Vendor shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Bidder retaliate against any person for reporting instances of such discrimination. The Vendor shall provide equal opportunity for subcontractors, subconsultants vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The Vendor understands and agrees that a material violation of this clause shall be considered a material breach of contract and may result in termination of the contract, disqualification or debarment of the Vendor from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

b. VENDOR'S AGREEMENT TO APPLY TO SUBCONTRACTS:

The vendor covenants and agrees to include the commercial non-discrimination clause in all subcontractor agreements.

DISCRIMINATION PROHIBITED

Palm Beach County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R-2017-1770, as may be amended, the successful vendor warrants and represents that throughout the term of the contract, including any renewals thereof, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered a default of contract.

LEGAL REQUIREMENTS

The Vendor must strictly comply with all Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the goods and/or services provided herein. The UCC shall prevail as the basis for contractual obligations between the Vendor and the County for any terms and conditions not addressed. The County shall not be liable to the Vendor for any legal fees, court costs, or other legal expenses arising from the interpretation or enforcement of this order/contract, or from any other matter generated by or relating to this order/contract.

CRIMINAL HISTORY RECORDS CHECK ORDINANCE

Pursuant to Palm Beach County Code Section 2-371 through 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), the County shall conduct fingerprint based criminal history record checks on all persons not employed by the County who repair, deliver, or provide goods or services for, to, or on behalf of the County. A fingerprint based criminal history record check shall be conducted on all employees and subcontractors of vendors, including repair persons and delivery persons, who are unescorted when entering a facility determined to be critical to the public safety and security of the County. County facilities that require this heightened level of security are identified in Resolution R-2003-1274, as may be amended. The vendor is solely responsible for understanding the financial, schedule, and staffing implications of this Ordinance. Further, the vendor acknowledges that its pricing offered includes any and all direct or indirect costs associated with compliance of this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County. This paragraph does not apply to Vendors providing online access to library resources under license agreement.

PUBLIC ENTITY CRIMES

In accordance with the Florida Public Entity Crime Statute 287.132.133, persons and affiliates who are entering into a contract or performing any work in furtherance with Palm Beach County certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of FloridaDepartment of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Florida Statute 287.133 (3) (a).

SCRUTINIZED COMPANIES

a. <u>SCRUTINIZED COMPANIES</u>: As provided in F.S. 287.135, by entering into an order/contract or performing any work in furtherance of this order/contract, the Vendor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

If the County determines, using credible information available to the public, that a false certification has been submitted by Vendor, the resulting order/contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of the order/contract shall be imposed, pursuant to F.S. 287.135.

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b. <u>SCRUTINIZED COMPANIES (WHEN ORDER/CONTRACT VALUE IS GREATER THAN \$1 MILLION)</u>: As provided in F.S. 287.135, by entering into an order/contract or performing any work in furtherance of this order/contract, theVendor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by Vendor, the resulting order/contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of the order/contract shall be imposed, pursuant to F.S. 287.135.

S/M/WBE POLICY

It is the policy of the Board of County Commissioners ("Board") that all segments of its business population, including, but not limited to, small, local, minority and women owned businesses, have an equitable opportunity to participate in the County's procurement process, prime contract and subcontract opportunities. To that end, the Board adopted an Equal Business Opportunity Ordinance which is codified in Sections 2-80.20 through 2-80.30 (as may be amended) of the Palm Beach County Code, (EBO Ordinance) which sets forth the County's requirements for the Equal Business Opportunity Program, and which is incorporated herein. The provisions of the EBO Ordinance shall have precedence over the provisions of the solicitation in the event of a conflict.

All forms related to the Equal Business Opportunity Program, including waiver forms and good faith effort documentation can be found at: <u>http://discover.pbcgov.org/oebo/Pages/Documents.aspx</u>

LOCAL PREFERENCE

In accordance with the Local Preference Code, a preference may be given to (1) vendors or quoters having a permanent place of business in Palm Beach County or (2) vendors or quoters having a permanent place of business in the Glades that are able to provide the goods and/or services to be utililized within the Glades.

INDEMNIFICATION. Intentionally Omitted.

INSURANCE REQUIREMENTS

If vendor is providing a service under this order/contract, then Vendor shall, at its sole expense, maintain in full force and effect at all times during the life of this order/contract, insurance coverages and limits (including endorsements), as required by the County. These requirements shall not in any manner limit or qualify the liabilities and obligations assumed by the vendor under this order/contract. All coverages shall be provided on a primary basis. Vendor shall provide the County with a Certificate of Insurance evidencing such coverages prior to the commencement of any services and within a time frame specified by the County (normally within 2 working days of request). Failure to maintain the required insurance shall be considered a default of contract.

SAFETY DATA SHEETS (SDS)

Any toxic substance provided to the County as a result of this solicitation or resultant order/contract shall be accompanied by its SDS.

ENDORSEMENTS

No endorsements by the County of the goods and/or services will be used by the Vendor in any way, manner or form.

VENUE AND GOVERNING LAW

Any and all legal action necessary to enforce the award or the resultant order/contract will be held in Palm Beach County, Florida. Any legal action necessary to enforce the award or the resultant order/contract shall be governed by the laws of the State of Florida.

PUBLIC RECORDS, ACCESS AND AUDITS .

Any material submitted relating to this order/contract is considered a public document in accordance with Section 119.07, Florida Statutes. This includes material which the responding vendor might consider to be confidential. All submitted information that the responding vendor believes to be confidential and exempt from disclosure (i.e., a trade secret or as provided for in Section 119.07 and Section 812.081, F.S.) must be specifically identified as such. Upon receipt of a public records request for such information, a determination will be made as to whether the identified information is, in fact, confidential.

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The County shall have the right to request and review vendor's books and records to verify vendor's compliance with the Contract, adherence to the Equal Business Opportunity Program and its response. The County shall have the right to interview subcontractors, and workers at the work site to determine Contract compliance. The bidder shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion or termination of the Contract. Vendor shall retain all books and records pertaining to this Contract, including, but not limited to, subcontractor payment records, for five (5) years after project completion date. The County and the Palm Beach County Inspector General shall have access to such records as required in this Section for the purpose of inspection or audit during normal business hours, in Palm Beach County at any reasonable time during the five (5) years.

Notwithstanding anything contained herein, as provided under Section 119.0701, Florida Statutes, if the Vendor: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2), Florida Statutes, the Vendor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time, <u>as applicable</u>. To the extent applicable, the Vendor is specifically required to:

- (1) Keep and maintain public records required by the County to perform services as provided under this order/contract.
- (2) Upon request from the County's Custodian of Public Records ("County's Custodian") or County's representative/liaison, on behalf of the County's Custodian, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law. The Vendor further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- (3) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the order/contract term and following completion of the order/contract, if the Vendor does not transfer the records to the public agency. Nothing contained herein shall prevent the disclosure of or the provision of records to the County.
- (4) Upon completion of the order/contract, the Vendor shall transfer, at no cost to the County, all public records in possession of the Vendor unless notified by County's representative/liaison, on behalf of the County's Custodian, to keep and maintain public records required by the County to perform the service. If the Vendor transfers all public records to the County upon completion of the order/contract, the Vendor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the order/contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically by the Vendor must be provided to the County, upon request of the County's Custodian or the County's representative/liaison, on behalf of the County's Custodian, in a format that is compatible with the information technology systems of County, at no cost to County.

Vendor acknowledges that it has familiarized itself with the requirements of Chapter 119, Florida Statutes, and other requirements of state law applicable to public records not specifically set forth herein. Failure of the Vendor to comply with the requirements of this Section, Chapter 119, Florida Statutes, and other applicable requirements of state law, shall be a material breach of this order/contract. County shall have the right to exercise any and all remedies available to it for breach of contract, including but not limited to, the right to terminate for cause.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS ORDER/CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT <u>RECORDSREQUEST@PBCGOV.ORG</u> OR BY TELEPHONE AT 561-355-6680.

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PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL AUDIT REQUIREMENTS

Pursuant to Palm Beach County Code, Section 2-421-2-440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

BUSINESS INFORMATION

If vendor is a Joint Venture for the goods/services described herein, vendor shall, upon request of Palm Beach County, provide a copy of the Joint Venture Agreement signed by all parties.

ANNUAL APPROPRIATIONS

The County's performance and obligation to pay under this order/contract is contingent upon an annual appropriation by the Board of County Commissioners for subsequent fiscal years. If County terminates this contract as a result of non-appropriation of funds, Vendor shall not be obligated to refund any pre-paid fees.

CONFLICT OF INTEREST

Vendor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required by this order/contract as provided for in Chapter 112, Part III, Florida Statutes and the Palm Beach County Code of Ethics. Vendor further represents that no person having any conflict of interest shall be employed for said performance or services. Vendors shall disclose the name of any officer, director, or agent who is also an employee or a relative of an employee of Palm Beach County. Further, vendor shall disclose the name of any County employee or relative of a County employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the vendor's firm or any of its branches.

E-VERIFY - EMPLOYMENT ELIGIBILITY

Vendor warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. No later than January 1, 2021, Vendor shall: (1) register with and use the E-Verify System (E-Verify gov), to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the Vendor's subconsultants performing the duties and obligations of this order/contact are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Vendor shall obtain from each of its subconsultants an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. Vendor shall maintain a copy of any such affidavit from a subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this order/contract which requires a longer retention period.

County shall terminate this order/contract if it has a good faith belief that Vendor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If County has a good faith belief that Vendor's subconsultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, County shall notify Vendor to terminate its order/contract with the subconsultant and Vendor shall immediately terminate its order/contract with the subconsultant.

If County terminates this order/contract pursuant to the above, Vendor shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this order/contract was terminated.

Effective from 12/09/2020

AND LEGAL SUFFICIENCY Helfart Page 6 of 6 his



Authorization by Customer:

Signature:

Name:

Title:

Date Signed:

Authorization by Proguest LLC:

DocuSigned by: Signature Dawn Branliam Name: Dawn 184 Part Part Part

Title: Director, Customer Service

POVED AS TO FORM-

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Paralegal ProQuest Legal

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Date 28 October 2021