

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 02/06/2024

Consent

Regular

Ordinance

Public Hearing

Department:

Submitted By: County Library/Administration

Submitted For: County Library/Administration

I. EXECUTIVE BRIEF

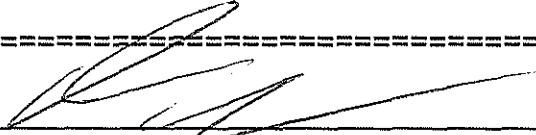
Motion & Title: Staff recommends motion to approve a Subscriber License Agreement between Palm Beach County and Candid, for a (1) year term beginning on February 7, 2024, with four (4), (1) year automatic renewal options, in the amount of \$12,995.00 each year.

Summary: The Library Department requests a new one (1) year term with four (4) additional one (1) year automatic renewal periods with Candid. This Agreement would connect people who want to change the world to the resources they need to do it through research, collaboration, and training. Candid is a charitable organization whose charitable purposes include to collect, organize, and make available to the public information about the nonprofit sector and to study and give counsel on the organization, management, and programming of nonprofits. The Agreement contains liability provisions that differ from that adopted for use by the County under PPM CW-F-049. In accordance with PPM CW-F-049, Risk Management and the County Attorney's Office have reviewed the language and advised the Library Department of the associated risks. Due to business needs and the benefits to be derived from the Agreement, Risk Management and the County Attorney's Office have agreed to allow the Department to move the agreement forward for Board of County Commissioner approval. The Agreement caps Candid liability to three (3) times the total fees paid by the County during the 12 months immediately preceding the date on which the cause of action arose, which is \$38,985. **Countywide (AH)**

Background and Justification: Residents can make extensive use of information contained in the Licensed Materials database for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis. This database aligns with the library's goals to support the business and non-profit sectors and aids our residents with community development.

Attachments:

- 1. Candid, Subscriber License Agreement

Recommended By:  (Douglas Crane) 1.12.24
Department Director Date

Approved By:  (Todd Bonlarron) 1/30/24
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>12,995</u>	<u>12,995</u>	<u>12,995</u>	<u>12,995</u>	<u>12,995</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>12,995</u>	<u>12,995</u>	<u>12,995</u>	<u>12,995</u>	<u>12,995</u>

ADDITIONAL FTE

POSITIONS (Cumulative) 0 0 0 0 0

Is Item Included in Current Budget? Yes No

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

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

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 Lamos
 (Director, Library Finance and Facilities)

III. REVIEW COMMENTS:

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

[Signature] 1/16/2024
 OFMB
 GA 1/16
 Mar. 116

[Signature] 1/25/24
 Contract Dev. And Control

B. Legal Sufficiency:

Anne Delbert 1-29-24
 Assistant County Attorney

C. Other Department Review:

N/A
 Department Director

Candid.

Candid Subscriber License Agreement

Terms of Service (“TOS”)

WHEREAS, Candid is a charitable organization whose charitable purposes include to collect, organize, and make available to the public information about the nonprofit sector and to study and give counsel on the organization, management, and programming of nonprofits;

WHEREAS, Candid works to connect people who want to change the world to the resources they need to do it through research, collaboration, and training;

WHEREAS, every year, millions of nonprofits spend trillions of dollars around the world and Candid has developed resources to help find out and explain where that money comes from, where it goes, and why it matters;

WHEREAS, You desire to obtain a license to Candid’s Service (defined below) for the purpose of benefiting the social sector;

WHEREAS, the license of Candid’s Service to You directly furthers Candid’s charitable purposes of strengthening the social sector by advancing knowledge about philanthropy in the United States and around the world;

NOW, THEREFORE, in consideration of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Definitions:

“Authorized Users” are:

- For Single User – the account holder is the only person authorized to use the subscription.

- For Multi-user – only employees of the subscribing organization who have been authorized by the subscription administrator.
- For Enterprise – in addition to one designated administrator,
 - Any persons affiliated with Licensee.
 - Full and part time students and/or employees (including faculty, staff, affiliated researchers and independent contractors) of Licensee, regardless of the physical location of such persons, who are authorized by Licensee to access Licensee's Intranet; or,
 - Walk-ins. Patrons not affiliated with Licensee who are physically present at Licensee's site(s) and are authorized by Licensee to access Licensee's Intranet ("walk-ins").

“Effective Date” is the date of completion by You of the online registration process to license Candid content.

“Licensed Materials” is the applicable Candid Service through its related Site for which You have subscribed to pursuant to Section 4 of this TOS. The Candid Services covered by this TOS are identified in Appendix 1.

“Service” is certain content and the functions, facilities, and services related thereto delivered through a subscription service within proprietary websites operated and maintained by Candid.

“Site” or “Website” is one or more websites owned by Candid for which this Terms of Service applies, including any Services accessed via FoundationCenter.org or Guidestar.org URLs.

“We,” “Our,” “Us,” “Candid,” or “the Licensor” is Candid, a New York not-for-profit corporation

“You,” “Your” and “Subscriber” refer to the individual, company, organization or other legal entity on whose behalf this Agreement is accepted, and

1. Permitted Uses

You may access and use such portions of the Site for which neither registration nor a fee is required as set forth herein. Without limiting the foregoing, if You wish to access more than one (1) nonprofit profiles within the Site, you must register with Candid.

Subject to the restrictions in Section 2 below, Candid hereby grants to You a revocable, non-exclusive and non-transferable license to use the Licensed Materials, and the right to provide access to the Licensed Materials for use by Authorized Users through the Service, strictly in accordance with this TOS, to access and use the Service for the following purposes (collectively, "Permitted Uses"):

For Single User and Multi-User:

1. Licensee and Authorized Users shall have the right to use the Service to perform searches of the database(s) included in your Subscription; and, for some subscription services, access additional Candid content ("Additional Candid Content").
2. **Digitally Copy.** Licensee and Authorized Users may, as applicable with Your subscription, download and digitally copy a reasonable portion of the Licensed Materials.
3. **Print Copy.** Licensee and Authorized Users may print a reasonable portion of the Licensed Materials.

For Enterprise Users:

1. All rights of single and multi-users, plus:
2. Licensee and Authorized Users shall have the right to electronically display the Licensed Materials.
3. **Recover Copying Costs.** Licensee may charge a reasonable fee to Authorized Users to cover costs of copying or printing portions of Licensed Materials for Authorized Users, provided such copies are of such portions of Licensed Materials.
4. Licensee and Authorized Users may make such local digital copies of the Licensed Materials as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.

5. **Collections of Information.** Authorized Users shall be permitted to extract or use information contained in the Licensed Materials database for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis. Except for permitted Scholarly Sharing as defined below, under no circumstances may such extracted information be compiled into a new or derivative database that is made available to any other Authorized User or third party by the Licensee or by any Authorized User.
6. **Course Packs and Course Reserves (Print and Electronic).** Licensee and Authorized Users may use a minimal, insubstantial portion of the Licensed Materials solely in connection with specific courses of instruction offered by Licensee.
7. **Electronic Links.** Licensee may provide an electronic link to the Licensed Materials from Licensee's Intranet and is encouraged to do so in ways that will increase the usefulness of the Licensed Materials to Authorized Users. Licensor staff will assist Licensee upon request in creating such links effectively and directing Licensee as to permissible uses of any Licensor trademark or logo in conjunction with such links.
8. **Scholarly Sharing.** Authorized Users may transmit to a third-party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal, non-commercial use, scholarly, educational or scientific research, or non-commercial professional use, which in no case shall allow for sale or re-sale of such materials. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User's own non-commercial scientific, scholarly and educational works.

All rights not expressly granted in this Agreement are reserved to Candid.

2. Prohibited Uses

The rights granted in Section 1 above are limited as follows:

- 2.1. **Use** the Licensed Materials other than as authorized by these Terms of Use.
- 2.2. **Unauthorized Use.** Licensee shall not knowingly encourage, permit or allow anyone other than Authorized Users to use the Licensed Materials.

- 2.3. **Modification of Licensed Materials.** Licensee shall not, and shall reasonably ensure that Authorized Users shall not, modify or create a derivative work of the Licensed Materials without the prior written permission of Licensor. Further, Licensee shall not disassemble, decode, decompile, or otherwise reverse engineer the Site, including, without limitation, any interfaces or software programs comprising the Site;
- 2.4. **No Text and Data Mining.** Licensee may NOT use any data mining, robots or similar data gathering and extraction methods with respect to the Site or any portion thereof.
- 2.5. **Removal of Copyright Notice.** Licensee may not and shall reasonably ensure that the Authorized Users shall not, remove, obscure or modify any copyright or other notices included in the Licensed Materials. Any stored hard copy or digital copy remains the property of Candid and must retain Candid's copyright information.
- 2.6. **No Exploitative Use.** Subscriber shall not, and shall reasonably ensure that Authorized Users shall not, sell, distribute, loan, lease, bulk reproduce or commercially exploit the database(s), any search output therefrom, or any additional Candid content included in the Service, or create any derivative work using the database(s) or any additional Candid content included in the service.
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- 2.8. **No Excessive Printing/Downloading.** Printing or downloading of any search output may not exceed a 100 pages in a single day.
- 2.9. **No Excessive Use.** Scraping or other technological means of wholesale or material downloading or storing of the database(s) or of additional Candid content is STRICTLY PROHIBITED. PLEASE NOTE that excessive downloading (as determined at the sole discretion of Candid) justifies Candid to immediately suspend or terminate access to a Subscriber subscription without further liability to Candid or recourse by the Subscriber.
- 2.10. **No attribution.** The license rights are limited to the Subscriber and authorized Additional Licensees alone and do not extend to any subsidiary, parent, related or

affiliated organizations, OR TO ANY THIRD PARTY, except that where the Subscriber is a library or other public institution, Subscriber's rights to use the Service and the database(s) and additional Candid content are extended to the patrons of those institutions as well, so long as such use is in accordance with the terms of this Agreement.

- 2.11. **Audit of license use.** Licensee agrees to keep records and books of account relating to the License (including, as applicable, number of subscriptions and users, etc.). Candid will have the right, not more than one (1) time during each year of the Term and for a period of two (2) years thereafter, to audit (itself or through a designee) the facilities, books and records of Licensee for the purpose of verifying Licensee's compliance with the License terms and prohibitions of this Agreement. Such audit will take place upon no less than five (5) business days' prior notice to Licensee during regular business hours. Candid will make reasonable efforts to minimize the disruption to Licensee's business, and Licensee will cooperate with Candid in the conduct of such audit. Candid will bear its own expense in connection with such audit, provided that if any audit reveals an underpayment or other non-compliance with the License terms, Licensee will promptly pay all amounts owed and or otherwise correct any non-compliance and confirm it has done so in writing. If any underpayment is five percent or more for the applicable period, Licensee will also pay interest at the rate of 1.5% per month on the unpaid portion (from the date due until date paid) and reimburse Candid for the expense of the audit (not to exceed \$10,000). In addition, as an alternative, Candid reserves the right at any time during the Term to require Licensee to: (a) provide an executive officer's certificate verifying compliance with the terms of the License; and/or (b) accurately complete a self-audit questionnaire relating to use of the Service that is verified by an executive officer. By invoking any rights and procedures described above, Candid does not waive its rights to enforce the License or to protect its intellectual property by any other means permitted by law.

3. Proprietary Materials

- 3.1. The Service contains copyrighted material, trademarks, and other proprietary information of Candid (collectively "Proprietary Material"), including, but not limited to, text, software, photos, graphics, images, code, design, coloring, layout and all other

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- 3.2. Neither Licensee nor its Authorized Users shall have any right, title or interest in the Licensed Materials. Nothing in this Agreement, nor use of the Licensed Materials pursuant to this Agreement, shall cause Licensee or any Authorized User to acquire any right of title or interest in the Licensee Materials. This TOS does not grant Licensee or any Authorized User the right to use any Licensor trademark, service mark, or logo for any purpose whatsoever without the prior written consent of Licensor, in its sole discretion.
- 3.3. Except as otherwise expressly permitted by this Agreement, or as permitted under copyright law, no posting, copying, downloading, uploading, transmission, retransmission, distribution, redistribution, publication, republication, decompilation, disassembling, reverse engineering, or otherwise modifying or commercially exploiting of any Proprietary Material is permitted without the express permission of the copyright owner. In the event of any copying, redistribution, or publication of copyrighted material as permitted by law, no changes in or deletion of author attribution, trademark, legend, or copyright notice shall be made.
- 3.4. Any Service or Site bearing a service mark(s) and other Candid mark(s) and logo(s) are service marks and trademarks of Candid. Other trademarks, service marks, and logos used in the Service Website or Candid's Website are the trademarks, service marks, or logos of their respective owners.

4. Access To The Service

Candid reserves the right, for any reason and without notice, in its sole discretion, to terminate, change, suspend, or interrupt access, in whole or in part, to the Site. Candid further reserves the right to impose registration, password and other security precautions on access to and use of the Site.

5. Fees

- 5.1 The Subscription fees payable for use of the Licensed Materials, as well as any associated terms may be viewed or accessed on the webpage(s) associated with the relevant Licensed Materials.
- 5.2 **IMPORTANT BILLING INFORMATION:** For single and multi-user accounts electing to subscribe to any monthly Subscription plan, which requires credit card billing, or to all account types with an annual or biennial Subscription plan and elect to pay your fee by credit card, you are agreeing to have your credit card charged according to and agree to the respective terms for the plan you select. All accounts will automatically renew, at the then current subscription plan fee, upon the next anniversary date of your subscription. Please note that there is no proration of your Subscription charge if you terminate your Subscription before the end of the Subscription period. **PLEASE NOTE THAT ALL SUBSCRIPTIONS ARE NON-REFUNDABLE.**

6. Licensor Performance Obligations

- 6.1. **Availability of Licensed Materials.** Upon successful completion of the registration process by Licensor, Licensor shall make the Licensed Materials available to Licensee. For Single and Multi-User Access accounts, access should generally be available on the Effective Date. For Enterprise Access accounts, it is anticipated that access will be made available within 72 hours of the Effective Date.
- 6.2. Licensor will provide and maintain help files and other appropriate user documentation.
- 6.3. Licensor will offer activation or installation support, including assisting with the implementation of any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax during normal business hours for feedback, problem-solving, or general questions.
- 6.4. Licensor will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensor software in accordance with any training schedule agreed to by the parties and subject to Licensor standard fees for such services.

6.5. **Quality of Service.** Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards generally provided in the scholarly information provision industry in the Licensee's locale.

6.5.1. Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. In addition, Licensor shall use reasonable efforts to minimize down-time and periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available. Licensor shall have no obligation in relation to downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Licensor shall use reasonable efforts to schedule planned down-time to be performed at a time to minimize inconvenience to both parties. Licensor shall use reasonable efforts to notify Licensee (which may include notice posted on Licensor's website) of all instances of system unavailability that occur outside the Licensor's normal maintenance window as soon as reasonably practicable after Licensor learns of such system unavailability and use reasonable efforts (which may include notice posted on Licensor's website) to provide advance notice of known hardware or software changes that may affect system performance, where the same materially affects the availability of the Licensed Materials. Further, Licensor shall notify Licensee as soon as reasonably possible (which may include notice posted on Licensor's website) when the URLs and server domain names that affect Licensee's access are modified.

6.5.2. If the Licensed Materials fail to operate in material conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall use reasonable efforts to restore access to the Licensed Materials as soon as reasonably practicable. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall compensate Licensee in an amount that the nonconformity is proportional to the total Licensed Materials and the total Fees owed by Licensee under this Agreement.

- 6.6. **Modifications of Licensed Materials.** Licensee understands that from time to time the Licensed Materials will be added to, updated, modified and deleted from (e.g., to keep current information, certain expired data will be routinely deleted) by Licensor and/or that portions of the Licensed Materials may migrate to other formats.
- 6.7. **Notice of "Click-Through" License Terms or Other Means of Passive Assent.** In the event Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before Licensee permits Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), or otherwise attempts to impose such terms on Authorized Users through the use or viewing of the Authorized Materials, Licensor shall provide Licensee with notice of and an opportunity to comment on such terms. In no event shall such terms materially differ from the provisions of this Agreement. In the event of any conflict between such terms and this Agreement, the terms of this Agreement shall prevail.
- 6.8. **Withdrawal of Licensed Materials.** In addition to Licensor's right to modify the Licensed Materials as stated above, Licensor reserves the right to withdraw from the Licensed Materials any item (or part of an item) for which it no longer retains the right to publish, or which it has reasonable grounds to believe: (i) infringes copyright or any other third party right; is defamatory, obscene, unlawful or otherwise objectionable; or, (ii) may cause harm to Licensor, Licensor's assets or any of Licensor's website users. Licensor shall use reasonable efforts to notify the Licensee of such withdrawal (which may include notice posted on Licensor's website). If any such withdrawal renders the Licensed Materials substantially and materially less useful to Licensee or its Authorized Users, Licensee shall promptly notify Licensor of the same and Licensor shall reimburse Licensee a portion of the total Fees owed by Licensee hereunder in an amount reflecting the withdrawn portion as a proportion of the Licensed Materials.
- 6.9. **Usage Data.** Only upon specific request by the account administrator, Licensor shall make available to Licensee statistics regarding the usage of the Licensed Materials by Licensee and/or its Authorized Users. Except as otherwise required under applicable laws, regulations or court rulings: (i) Licensor agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users; (ii) Such usage data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form; and

(iii) Raw usage data, including but not limited to information relating to the identity of specific Authorized Users and/or uses, shall not be provided to any third party.

7. Licensee Performance Obligations

7.1. Provision of Notice of License Terms to Additional Authorized Users.

7.1.1. For Multi-User License Accounts. Only companies, organizations or other corporate legal entities may be Subscribers under Multi-User License Plans, and Authorized Users under Multi-User License Plans must be employees of such entities. This TOS may be viewed at any time by you and Authorized Users at <https://candid.org/terms>. If you are an Authorized User of a Subscription under a Multiple License Plan, all of the rights, obligations and agreements of Subscribers stated in this TOS (whether referred to as "Subscriber," "you" or "your") shall apply equally to you as an Authorized User, except for the obligation to pay the Subscription fees and any other rights, obligations or agreements expressly excepted from application to Authorized User.

7.1.2. For Enterprise Access Accounts. Licensee shall provide Authorized Users with reasonable and appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, the limitations on access or use of the Licensed Materials as set forth in this Agreement. Licensee shall use its best efforts to ensure that Authorized Users comply with these Terms of Service.

7.2. **IP Addresses (For Enterprise Access Accounts Only).** Licensee shall provide Licensor, in writing, with the Internet Protocol (IP) addresses representing Authorized Users of its Intranet who will be granted authorized access to the Licensed Materials. Licensee retains sole responsibility for ensuring the accuracy, management, and confidentiality of IP addresses and is further responsible for immediately notifying Licensor, in writing, of any changes to the IP addresses. The addition of new IP addresses hereunder shall be discussed with Licensor in advance and may affect pricing.

7.3. **Protection from Unauthorized Use.** Reasonable procedures should be implemented to restrict access to the Licensed Materials to only Authorized Users. For

Multi-User and Enterprise Access Accounts, Licensee, through their subscription administrator, shall implement reasonable procedures to restrict access to the Licensed Materials to only Authorized Users, including termination of access when an Authorized User is no longer employed by, enrolled in or otherwise affiliated with Licensee. Furthermore, Licensee shall maintain the confidentiality of any institutional passwords regarding the Licensed Materials provided by Licensor (e.g., for administrative purposes). Licensee has sole responsibility for issuing and managing Authorized User's access to Licensee's Intranet, and Licensor shall have no obligations whatsoever with regard thereto. Licensee shall instruct Authorized Users to maintain the confidentiality of their passwords for access to the Licensed Materials.

- 7.4. **Notice of Unauthorized Use.** If Licensee reasonably suspects or believes that unauthorized use of the Licensed Materials has occurred or is occurring by an Authorized User or by any person or entity using any access codes issued to or by Licensee under this TOS, Licensee shall promptly notify Licensor of such suspected or actual unauthorized use of the Licensed Materials. Notwithstanding such notice to Licensor, Licensee and the Authorized User will remain responsible for any unauthorized use of the Licensed Materials.
- 7.5. **Cooperation regarding Unauthorized Use.** If Licensee or any Authorized User access to or usage appears to be in violation of this TOS, or if Authorized User or Licensee becomes aware of uses of the Licensed Materials or Licensee's procedures that may affect compliance with the terms of this TOS, including without limitation breach of password or other security, such Authorized User or Licensee shall promptly notify the Licensor. In the event Licensee notifies Licensor, or Licensor becomes aware, of any suspected or actual unauthorized use of the Licensed Materials by an Authorized User or by any person or entity using any access codes issued to or by Licensee under this TOS, Authorized User or Licensee shall promptly and fully cooperate with Licensor in the investigation of such unauthorized use of the Licensed Materials of which it is made aware and shall use reasonable efforts to remedy such unauthorized use and prevent its recurrence. Licensor may terminate any such Authorized User's access to the Licensed Materials during or as a result of such investigation at its sole discretion as detailed in Section 10.2, provided that Licensor shall provide reasonable notice to Licensee of such actions and the parties shall reasonably cooperate with each other to avoid recurrence of any unauthorized use.

- 7.6. All Authorized Users shall be subject to the terms and conditions of this TOS and shall be responsible for the full compliance with the terms and conditions of this TOS.

8. Indemnification- (This section left purposely blank.)

9. Term

- 9.1. This Agreement shall commence on the Effective Date as per the Term listed on the attached Order Form, and continue in effect for the term specified in the registration process, unless terminated earlier for cause in accordance with the provisions below.
- 9.2. This Agreement will then renew automatically at its plan level and frequency unless either Party provides the other at least thirty (30) days prior written notice to the expiration of the then current term. In no event shall the term and all renewals exceed 5 years.

10. Terminating Your Account

If you wish to terminate your Subscription, the account administrator must do so by contacting Candid's Customer Service Department, either by email or in writing to the email or address listed in the Notices Section. Your account is billed and payable in advance, each month, year, or every two years (depending on the type of Subscription you have), on the anniversary of your Subscription start date. It is important to note that Subscriptions are not prorated. Once you notify Candid's Customer Service Department that you wish to terminate your Subscription, Candid will stop billing your account starting with the next monthly, annual, or biennial billing cycle. Example: if you are on an annual Subscription and your start date is December 15 and you notify Candid on July 15 of the next year to terminate your Subscription, your account would have already been billed through the end of your annual billing cycle (December 14). You would be able to continue using the Service through the end of your current Subscription period, and your account would be terminated on that date. PLEASE NOTE THAT SUBSCRIPTIONS ARE NON-REFUNDABLE.

11. Termination

- 11.1. In the event that either Party believes that the other has materially breached any obligations under this TOS, including without limitation if Licensor believes that

Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have fifteen (15) days from the receipt of notice to cure the alleged material breach and to notify the non-breaching party in writing that cure has been effected. If the material breach is not cured within the fifteen (15) day period, the non-breaching party shall have the right to terminate the Agreement effective upon receipt of such notice.

- 11.2. Notwithstanding the above section, the Candid reserves the right to terminate your Subscription immediately, or at any time, based on 1) non-compliance with any terms and conditions set forth in this TOS, 2) our inability to successfully bill your credit card according to the terms of your subscription, or 3) with or without notice and with or without cause. In addition, Candid may terminate the right of any Subscriber to access the Service at any time, with or without cause, in Candid's absolute discretion and without notice, and Authorized User or Licensee shall not be entitled to any pro-rata refund of Fees paid. The recital in this TOS of specific grounds for termination of a Subscriber's right to access the Service shall in no manner whatsoever limit Candid's absolute right to terminate any Subscriber's access to the Service under this Section. Should Candid terminate this agreement without cause, licensee will be refunded the unused portion of their annual fee based on a prorate basis of remainin months of their current term.

12. Effects Of Termination

- 12.1. Upon termination of this Agreement for any reason, online access to the Licensed Materials by Licensee and all Authorized Users shall be terminated. Copies of Licensed Materials made by Licensee or Authorized Users prior to termination and in accordance with the terms of the Agreement may be retained by Licensee or Authorized Users and may be used only as permitted by the terms of this Agreement. Copies of the Licensed Materials or any part of the Licensed Materials made in breach of the Agreement shall be immediately returned to Licensor or, at the option of the Licensor, be destroyed.
- 12.2. In the event of early termination of this Agreement by Licensee as a result of an uncured breach of this TOS by the Licensor, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the

Agreement from the date of termination, and such refund shall be in full and final satisfaction of all liabilities Licensor may have to Licensee.

13. Intellectual Proprietary Rights

You agree that you will not take any action that would infringe, misappropriate, or violate Candid's intellectual property interests and that you will comply with the intellectual property provisions set forth herein.

13.1. Copyright Protection

13.1.1. The Site (including without limitation the database and content found on the Site) is copyrighted or otherwise protected subject matter, is owned or licensed by Candid and is protected by United States and international copyright law, trademark law and other intellectual property laws. You are free to display and print for your personal, non-commercial use the content you receive through the Site provided you reprint any copyright and other rights notices included in such content. You may not reproduce, modify, distribute or publicly display the Site, in whole or in part, in any form (including by email, screen shots or other electronic means) except as is expressly authorized by these Terms of Use or a product-specific Candid agreement or License Agreement. If you would like to make copies and/or distribute any portion of the Site in ways not expressly authorized by these agreements, You must contact Candid for written permission, which it may grant or withhold in its sole discretion. Of course, you are free to encourage others to access the information themselves from the Site and tell them how to find it.

13.1.2. The Site contains information from third-party sources. If You believe that Your copyright interests are being infringed by anything on the Site, You must notify Candid of Your claim by filing a Notice with Candid. Your Notice must be in writing (either via electronic mail or by certified or registered mail to Candid, Attn: Customer Support, Candid, 32 Old Slip, New York, NY 10005 or email customersuccess@candid.org and must include: (1) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest that allegedly has been infringed; (2) a description of the copyrighted work that You claim has been infringed, including the Web page address of the

location where the copyrighted work exists or a copy of the copyrighted work; (3) a description or location of the material on the Site that You claim is infringing; (4) information we can use to contact You, including Your address, telephone number, and e-mail address; (5) a statement by You that You have a good faith belief that the use of the allegedly infringing material is without the authorization of the copyright owner, its agent, or the law; (6) a statement by You, made under penalty of perjury, that the above information in Your Notice is accurate and that You are the copyright owner or authorized to act on the copyright owner's behalf.

13.2. Linking to the Site

13.2.1. You may link to Candid's home page. You must contact media@candid.org if you wish to link to any page other than the home page. Any such links to the home page must not state or imply any sponsorship by Candid of your site, service, application, or mobile or handheld device application by us.

13.3. Trademark Protection

13.3.1. Candid is a registered service/trademark of Candid. All other trademarks referred to on this Web site are service/trademarks of their respective owners. You may not use any trademark or service mark appearing on the Site without the prior written consent of the owner of the mark. Candid.org is a trademark of Candid, with all rights reserved unless otherwise granted.

13.3.2. No Framing. Without our prior written permission, you may not frame, or in-line link, any of the content of the Site, or incorporate into another website, application, mobile or handheld device application, or other service any of our intellectual property.

13.3.3. You agree not to upload or otherwise place any information on the Site that would infringe or otherwise violate anyone's intellectual property interests or other rights, or that is false, misleading, defamatory, or otherwise contrary to law or regulation.

14. Representations And Warranties

- 14.1. Subject to the Limitations set forth elsewhere in this Agreement, Licensor represents that it has the right to license the rights granted under this Agreement to use Licensed Materials. The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any final damages and penalties awarded, including reasonable attorney's fees incurred in relation thereto, to the extent resulting from any claim by any third party of an infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User, provided such use is wholly in accordance with the terms of this Agreement. This indemnity shall survive the termination of this agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.
- 14.2. THE SERVICE AND THE DATABASE(S) AND ADDITIONAL CANDID CONTENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, RELIABILITY, OR CONTENT OF ANY INFORMATION OR MATERIAL PROVIDED BY OR THROUGH THE SERVICE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY, ACCURACY, ADEQUACY, COMPLETENESS, CURRENCY, CORRECTNESS, OR VALIDITY OF ANY INFORMATION OR MATERIAL PROVIDED BY OR THROUGH THE SERVICE RESTS WITH THE SUBSCRIBER.
- 14.3. Candid does not warrant that the functions of the Service will meet Subscriber's requirements or that the operation of the Service or the database(s) or any Additional CANDID Content will be uninterrupted or error free.
- 14.4. Candid shall not be liable for any loss or injury arising out of or caused, in whole or in part, by any negligent acts or omissions in procuring, compiling, collecting, interpreting, reporting, communicating, or delivering information contained in the Service or the database(s) or any Additional CANDID Content.
- 14.5. Candid has no control over the content of the websites or Portable Document Format (PDF) files of foundation IRS 990-PF or 990 filings that may be accessed from Candid Website or the Service Website through hypertext links ("Linked Sites"), and is not

responsible for their content. The Linked Sites are provided for your convenience only and you access them at your own risk.

15. Limitations On Liabilities And Remedies

- 15.1. CANDID IS NOT AND SHALL NOT BE LIABLE FOR ANY CLAIM, INJURY, OR DAMAGE ARISING FROM THE USE OR INABILITY TO USE THE SERVICE. THIS DISCLAIMER OF LIABILITY INCLUDES, BUT IS NOT LIMITED TO, ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION OR DELIVERY, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORDS, PROGRAMS OR FILES, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION.
- 15.2. In no event shall Candid be liable for any direct, indirect, special, incidental, punitive, exemplary, or consequential damages, including lost profits, arising out of the use or performance of the Service, even if Candid has been advised of the possibility of such damages.
- 15.3. In the event that a limitation on liability or remedy contained herein shall be adjudged invalid by a court of competent jurisdiction, all other limitations on liability or remedies shall remain valid, and in no event shall Candid's damages under any legal theory exceed three times (3x) the total fees paid by Subscriber under the license granted herein during the twelve months immediately preceding the date on which the cause of action arose.
- 15.4. Notwithstanding anything else in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.
- 15.5. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, privacy, trademark rights, moral rights, or the disclosure of confidential information. Except for the express warranties stated

above, THE LICENSED MATERIALS ARE PROVIDED "AS IS" WITHOUT WARRANTY, CONDITIONS OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, RELIABILITY, OR CONTENT OF ANY INFORMATION OR MATERIAL PROVIDED BY OR THROUGH THE LICENSED MATERIALS, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY, ACCURACY, ADEQUACY, COMPLETENESS, CURRENCY, CORRECTNESS, OR VALIDITY OF ANY INFORMATION OR MATERIAL PROVIDED BY OR THROUGH THE SERVICE RESTS WITH THE SUBSCRIBER. Licensor does not warrant that the functions of the Licensed Materials will meet Licensee's or Authorized User's requirements or that the operation of the Licensed Materials will be uninterrupted or error free. Licensor makes no representations or warranties, and specifically disclaims any responsibility whatsoever, regarding any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program through use of the Licensed Materials. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

- 15.6. Licensor has no control over the content of third-party websites or documents that may be accessed from hypertext links within the Licensed Materials ("Linked Sites"), and hereby disclaims any responsibility for the content, services or data collection and use practices of any Linked Site. Linked Sites are provided solely for the convenience of Licensee and Authorized Users, and access is provided at your own risk.
- 15.7. In the event that any of the limitations on liability or remedies contained herein shall be adjudged invalid by a court of competent jurisdiction, in no event shall Licensee's damages under any legal theory exceed the total Fees paid by Licensee under this Agreement during the twelve months immediately preceding the date on which the cause of action arose.

15.8.

16. Disclaimers

- 16.1. **Endorsement Disclaimer** - Candid does not endorse, support, sanction, or verify the information or material on or accessible via the Site. Unless otherwise specifically indicated, Candid does not endorse and has no affiliation with any of the organizations mentioned, listed in, described on or linked to via the Site, and it makes no representations or warranties whatsoever with regard to those organizations or any other organization, entity or person, including but not limited to the performance of goods and services provided by our advertisers or others to whose sites we link.
- 16.2. **Disclaimer Regarding Financial and Legal Advice** - The information on the Site is provided for educational and informational purposes only. Such information or materials do not constitute and are not intended to provide legal, accounting, or tax advice and should not be relied on in that respect. We suggest that You consult an attorney, accountant, and/or financial advisor to answer any financial or legal questions. Before you act on any information you've found on the Site, you should confirm any facts that are important to your decision. IF YOU RELY ON ANY INFORMATION OR SERVICE AVAILABLE THROUGH THE SITE, YOU DO SO AT YOUR OWN RISK. YOU UNDERSTAND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE OR LOSS YOU MAY INCUR THAT RESULTS FROM YOUR USE OF THE SITE OR ANY MATERIAL OTHERWISE PROVIDED BY THE SITE.
- 16.3. **Disclaimer Regarding Documents Uploaded to the Candid Web Site** - You are solely responsible for the documents you upload to the Candid Web site. You are advised not to upload Schedule B (List of Contributors) with the Form 990 for a public charity. You are advised to block any signatures, social security numbers, and personal addresses from documents that you upload. Candid reserves the right to refuse any document. In addition, Candid has the right to terminate any document at any time for any reason. Candid and its affiliates make no representations or warranties of any kind, whether express or implied, regarding any of the documents on the Candid Web site. Candid will not be held liable for any damages.

17. Force Majeure

Neither Party will be in breach or default of this Agreement or otherwise liable for any delay in or failure of its performance under this Agreement (except for any obligations to make payments to the other Party hereunder) to the extent such delay or failure arises from or in connection with an event or circumstance beyond its control, such as: any act of God or nature, including,

but not limited to, fire, flood, hurricane, blizzard or other extreme or inclement weather, environmental conditions, or natural calamity or disaster; health risk or emergency, including, but not limited to, epidemic, pandemic, famine, disease, quarantine, and other health risks declared or recognized by the Center for Disease Control, the World Health Organization, a national government or other similar body; hostilities, including, but not limited to, war (whether or not declared), military action, terrorist acts, civil unrest, civil disobedience, curfew restriction, public disorder, violent demonstration, or similar unrest; contamination or pollutant, including, but not limited to, from radioactivity, nuclear waste, toxic explosive, chemical or other hazardous or harmful substance or source; action by workers, including, but not limited to, rioting, strikes, slowdowns, work stoppage, or other labor disputes or activity; interruptions or disruptions to infrastructure, including, but not limited to, electricity or other utilities, telecommunications, or transportation; government regulation, warning, advisory, travel restrictions, or similar actions or pronouncements of authorities; and other circumstances beyond the control of the Parties, whether or not foreseeable. (The party suffering a Force Majeure Event will give notice to the other Party, stating the period of time the occurrence is expected to continue and will use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.)

18. Changing Accounts And Information

- 18.1. Any changes to your account referenced in this TOS, such as contact information, credit card, Username/Password or IP information, must be reported immediately to Candid's Customer Service Department, using the e-mail address or telephone numbers you provided during the Candid registration process. For fastest service, you may use the Account area if you are the Subscriber of a Single License Plan or a Multiple License Plan, accessible to Subscribers to the Service after logging in, to update your contact information automatically online, or to change your Password.
- 18.2. Current Subscribers of the Service with a Single License Plan or a Multi-User Plan may change or upgrade their subscriptions automatically, online, through the Subscriber Services area, accessible to Subscribers after logging in with your Username and Password. Instructions are provided for changing subscription cycles (e.g., from a monthly to an annual subscription), changing subscription plans (e.g., from a Single License Plan to a Multiple License Plan), or for upgrading to another service (e.g., from *Foundation Directory Online Essential* to *Foundation Directory Online Professional*).

18.3. Enterprise Access Account subscription administrators should contact Candid as provided for in Section 19 to update any of their relevant Subscriber information.

18.4. **Subscriber Information**

18.4.1. For purposes of identification, billing, and marketing, Subscriber agree to provide Candid with accurate, complete, and updated information required at the time of registration as a Subscriber ("Registration Data"), including your legal name, address, telephone number(s), e-mail address, and applicable payment data (e.g., credit card number and expiration date for Subscribers paying by credit card), and other information. Candid reserves the right to verify the accuracy of this information. You agree to promptly notify Candid of any change in your Registration Data. See Section 19 below for details on notifying Candid of these changes. Failure to comply with this provision may result in immediate suspension or termination of your license to use the Service.

18.4.2. Candid reserves the right to reveal any Registration Data or other information in its possession regarding Subscribers and Additional Licensees in cooperation with a request or investigation by any governmental body or governmental agency, or as otherwise required by law.

19. **Notices**

Any notice or waiver ("Notice") concerning this Agreement must be in writing and be sent to the other party at the address below (or to another address given by a party in a Notice) by personal delivery, recognized courier service, certified or registered mail (postage prepaid, return receipt requested) or by another method for which the sender has written confirmation of receipt by the other party. Notice will be considered given upon receipt, as evidenced by delivery receipt or other written proof.

If to Candid:

Candid
32 Old Slip
New York, NY 10015
Attn: Contracts Manager
E-mail: contracts@candid.org

If to Licensee:

Palm Beach Public Library

3650 Summit Blvd. West Palm Beach FL 33406 US

Address: sent to the relevant address submitted on the registration form

E-mail: sent to the relevant email submitted on the registration form

BILLING AND SUBSCRIPTION INQUIRIES

Candid's Customer Service Department is available to respond to your billing and account questions Monday through Friday, between 9:00 a.m. and 5:00 p.m., Eastern Standard Time.

- o E-mail - Products@candid.org
- o Telephone - Call, toll-free, 1-800-421-8656. In New York State, call 212-807-3690.
- o Fax - 212-807-3691.
- o Mail - Send all written correspondence to:

Candid
Customer Service Department
32 Old Slip
24th Floor
New York, NY 10005

TECHNICAL/PRODUCT SUPPORT

Subscribers seeking technical assistance or other assistance using the Service may send inquiries via e-mail at - CustomerSuccess@candid.org

20. Entire Agreement, Counterparts, Enforcement

20.1. This TOS Agreement is the entire agreement and understanding of the Parties with respect to the subject matter hereof, and it supersedes all prior and contemporaneous agreements, understandings, representations, and warranties, both written and oral, relating to the subject matter hereof.

20.2. Candid has the right to modify this TOS in any manner and at any time, without notice or liability. Any modification is effective immediately upon the earlier of (i) notice by

electronic mail to the e-mail address last provided to Candid by you; or (ii) fifteen days following the date that the modified TOS is first posted on the Service. Your continued use of the Service following its effective date shall be conclusively deemed an acceptance of all such modification(s). Your only right with respect to any dissatisfaction with any modifications made pursuant to this provision, or any policies or practices of Candid in providing the Service, including, without limitation, (i) any changes in the content of the Service, or (ii) any change in the amount or type of fees, charges, or assessments payable under this Agreement, is to terminate your Subscription and continued use of the Service by delivering proper notice thereof to Candid in accordance with the instructions provided in Section 17 below. Such notice will be effective at the end of your current billing cycle.

20.3. This Agreement, and all other aspects of a Subscriber's use of the Service, shall be governed by and construed in accordance with the substantive and procedural laws of the County of Palm Beach in the State of Florida.

20.4. The Parties agree that neither may bring a claim or assert a cause of action against the other, in any forum or manner, beyond the legal statute of limitation as per the law in the State of Florida after the cause of action accrued.

20.5. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20.6. A waiver of any term or breach of this Agreement must be in writing and signed by the waiving Party. A waiver in one instance will not constitute a waiver in another instance, whether similar or different.

20.7. No failure or delay in exercising any right or remedy will be construed as a waiver of that right or remedy and no partial exercise of a right or remedy will preclude any further exercise.

**** Link to privacy policy (in footer of Candid Site). <https://candid.org/privacy-policy>****

**** Note Pop Up for Registrants doc to be associated with this TOS****

APPENDIX 1

Candid Services Covered By TOS

- **Foundation Directory Online**
- **Grants to Individuals**
- **GuideStar Pro**



CANDID Foundation Directory Online; Grants to Individuals; GuideStar Pro Order Form

Licensee Contact Information:

Name: Claudia Gray Hamilton
Title: Claudia Gray Hamilton Financial Analyst III
Organization: Palm Beach County
Address: 3650 Summit Blvd. West Palm Beach FL 33406 US
Phone: (561) 233-2706
Website: www.pbclibrary.org

Billing Contact:

Amanda Woolf
Collection Development-AV & Electronic
Services Librarian II
woolfa@pbclibrary.org

Product Administrator:

Amanda Woolf
Collection Development-AV& Electronic
Wolfa@pbclibrary.org
(561) 233-2706

License Fee Payable:

Table with 3 columns: Product / Service, Line Description, Price. Row 1: Candid Community, Enterprise access to Foundation Directory, GuideStar and Grants to Individuals in all Palm Beach Libraries, \$12,995.00. Total: \$12,995.00

Term of Subscription: 2/7/2024 - 2/6/2025

Terms are subject to the attached per the Licensee's requirement

Subscriber

Palm Beach County

Joseph Abruzzo, Clerk

Anne Delgent

County Attorney, PBC

Licensor

DocuSigned by:

Bunkie Righter

A19A9BC8E64F49B...

Bunkie Righter, Senior Dir. Of Sales

Candid

1/2/2024

Mayor

Library Director

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.

ASSIGNMENTS

Assignments are prohibited unless prior written consent is given by the County and the Vendor.

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 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, or does not remedy such failure within a period of ten (10) days (or such period as the Director of Purchasing may authorize in writing) after receipt of notice from the Director of Purchasing specifying such failure. In the event the County terminates this order/contract in whole or in part because of default of the successful vendor, the County may procure goods and/or services similar to those terminated, and the successful vendor shall be liable for any excess costs incurred due to this action.

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.

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 <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>.

Note: Palm Beach County Vendors can now be paid by Credit Card via the County's voluntary 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 pbcpaymentmgr@mvpalmbeachclerk.com.

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.

PALM BEACH COUNTY
FINANCE DEPT.
P.O.BOX 4036
WEST PALM BEACH, FL 33402-4036

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 (i.e. Request for Quotation) which is accepted by the County (i.e. Purchase Order, Term Contract Notice) a binding contract is formed in accordance with the County's terms, conditions and specifications as set forth in the solicitation and this purchase order. Vendor certifies that the offer has been made by an officer or employee having the authority to bind the Vendor.

PRICING

- (1) Unless specifically requested in the specifications, any response containing modifying or escalation clauses shall be rejected.
- (2) The price offered must be in accordance with the unit of measure provided on the response page(s). One (1) space or line requires only one (1) single, fixed unit price. Anything other than a single, fixed unit price shall result in the rejection of your response.
- (3) Vendor warrants by virtue of submitting an offer that prices shall remain firm for a period of ninety (90) days from the date of opening to allow for evaluation and award.
- (4) Prices shall remain firm for the initial and any subsequent term unless modified by a special condition.
- (5) All unit prices offered should be within two (2) decimal points. If vendor's pricing offered exceeds two (2) decimal points, Purchasing reserves the right to round up or down accordingly.

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.

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.

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 Florida Department 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. **SCRUTINIZED COMPANIES:** 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.

- b. **SCRUTINIZED COMPANIES (WHEN ORDER/CONTRACT VALUE IS GREATER THAN \$1 MILLION)**: 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 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: <http://discover.pbcgov.org/oebo/Pages/Documents.aspx>

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 utilized within the Glades.

INDEMNIFICATION

To the extent authorized by law, Vendor shall indemnify, save and hold harmless the County, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Vendor, or its employees, agents, subcontractors or assignees pursuant to the terms and conditions of this order/contract.

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 with the County endorsed as an Additional Insured with a CG 2026 additional Insured-Designated Person or Organization Endorsement, or its equivalent, as follows: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, it's Officers, Employees and Agents." 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

The vendor agrees that copies of any and all property, work product, documentation, reports, computer systems and software, schedules, graphs, outlines, books, manuals, logs, files, deliverables, photographs, videos, tape recordings or data relating to the Contract which have been created as a part of the vendor's services or authorized by the County as a reimbursable expense, whether generated directly by the vendor, or by or in conjunction or consultation with any other party whether or not a party to the Contract, whether or not in privity of contract with the COUNTY or the bidder, and wherever located shall be the property of the COUNTY.

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.

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. 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 RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

SALES PROMOTIONS / PRICE REDUCTIONS / MOST FAVORED CUSTOMER

Should sales promotions occur during the term of the order/contract that lower the price of the procured item, the successful vendor shall extend to the County the lower price offered by the manufacturer on any such promotional item. Further, any price decreases effectuated during the order/contract period by reason of market change or otherwise, shall be passed on to the County. Additionally, anytime after award, the vendor may offer a reduced price which shall remain in effect for the duration of the order/contract. The successful vendor warrants that the price(s) shall not exceed the successful vendor's price(s) extended to its most favored customer for the same or similar goods or services in similar quantities, or the current market price, whichever is lower. In the event the successful vendor offers more favorable pricing to one of its customer(s), the successful vendor shall extend to the County the same pricing or the then current market price, whichever is lower.

PERFORMANCE DURING EMERGENCY

By submitting an offer, vendor agrees and promises that, immediately preceding, during and after a public emergency, disaster, hurricane, flood, or act of God, Palm Beach County shall be given "first priority" for all goods and services under this order/contract. Vendor agrees to provide all goods and services to Palm Beach County immediately preceding, during and after a public emergency, disaster, hurricane, flood, or act of God, at the terms, conditions, and prices as provided in this solicitation on a "first priority" basis. Vendor shall furnish a 24-hour phone number to the County. Failure to provide the goods or services to the County on a first priority basis immediately preceding, during and after a public emergency, disaster, hurricane, flood, or act of God, shall constitute breach of contract and subject the vendor to sanctions from doing further business with the County.

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.

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. In the event of such order/contract termination, Vendor shall also be liable for any additional costs incurred by County as a result of the termination.

Effective from 12/09/2020

