

**FORSYTH COUNTY
BOARD OF COMMISSIONERS**

**BRIEFING
DRAFT**

MEETING DATE: DECEMBER 20, 2018

AGENDA ITEM NUMBER 9

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF CONTRACT BETWEEN FORSYTH COUNTY AND EBSCO INDUSTRIES, INC., TO PROVIDE LIBRARY STAFF AND CUSTOMERS WITH ONLINE ACCESS TO NOVELIST SELECT AND MYHERITAGE (FORSYTH COUNTY PUBLIC LIBRARY)

COUNTY MANGER'S RECOMMENDATIONS OR COMMENTS:

SUMMARY OF INFORMATION:

Agreement between Forsyth County and EBSCO Industries, Inc. to provide Library with access to and use of the following online resource databases at an annual cost of \$38,599.00, a planned expenditure covered by allocated funds in the Library's FY-19 Adopted Budget:

- NoveList Select – provides reading recommendations, series information, book reviews, etc. within the Library catalog; and
- MyHeritage – a genealogy database

ATTACHMENTS: YES NO

SIGNATURE: _____
 COUNTY MANAGER

DATE: _____

**RESOLUTION AUTHORIZING EXECUTION OF CONTRACT BETWEEN
FORSYTH COUNTY AND EBSCO INDUSTRIES, INC., TO PROVIDE
LIBRARY STAFF AND CUSTOMERS WITH ONLINE ACCESS
TO NOVELIST SELECT AND MYHERITAGE
(FORSYTH COUNTY PUBLIC LIBRARY)**

WHEREAS the Forsyth County Public Library is seeking to renew a contract with EBSCO Industries, Inc., to continue providing Library staff and customers with access to, and use of, the following online database resources: NoveList Select, providing reading recommendations, series information, book reviews, and more within the Library catalog; and MyHeritage, a Genealogy Database, for an annual cost of \$38,599.00, a planned expenditure covered by allocated funds in the Library's FY-19 Adopted Budget; and

WHEREAS the Library has already executed a contract with EBSCO to provide the County access to EBSCO's Library Aware and LearningExpress Library tools, which contract was for \$36,498.00, such that both contracts together add up to \$75,097.00, thus requiring the Board of Commissioners' approval;

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Board of Commissioners hereby authorizes the County Manager or his designee, to execute the necessary documents, on behalf of Forsyth County and its Public Library, with EBSCO Industries, Inc., to provide the Library with access to and use of NoveList Select and MyHeritage online databases for an annual cost of \$38,599.00, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this the 20th day of December, 2018.

FORSYTH COUNTY)

NORTH CAROLINA)

AGREEMENT

THIS AGREEMENT, made and entered into this 21st day of June, 2018 by and between Forsyth County, North Carolina (the "County") on the behalf of the Public Library and EBSCO Industries, Inc.(the "Provider");

WITNESSETH:

For the purpose and subject to the terms and conditions hereinafter set forth, the County hereby contracts for the services of the Provider, and the Provider agrees to provide the services to the County in accordance with the terms of the Agreement.

I.

The service to be performed by the Provider shall be as follows:

The provider shall provide the county access and use of the following online services:
Products include two resources with access for the Forsyth County Public Library:

- NoveList Select- Provides reading recommendations, series information, book reviews, and more within the Library catalog
- MyHeritage - Genealogy Database

The following documents, attached hereto, are incorporated herein:

Attachment A: EBSCO License Agreement

II.

The services of the Provider shall begin **August 1, 2018**, unless sooner terminated by mutual consent or as hereinafter provided, shall be provided until **July 31, 2019**; provided that either party shall have the right to terminate this Agreement upon thirty (30) days notice in writing to the other party.

III.

As full compensation for the Provider's services, the County agrees to pay the Provider the sum of **\$38,599.00** plus tax as invoiced by the Provider. Total payments under this contract are not to exceed **\$38,599** plus tax, ending July 31, 2019.

IV.

The Provider shall bill the County monthly for services rendered during the preceding thirty (30) days. The County shall pay all such bills within the following ten (10) days provided all elements of the Agreement are satisfactorily met.

The Provider shall operate as an independent contractor, and the County shall not be responsible for any of the Provider's acts or omissions. The Provider agrees to hold the County harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of the Provider.

The Provider shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. The Provider understands that neither federal, state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Provider or the employees of the Provider. The Provider further understands and agrees that the Provider is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement.

The Provider shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County.

The County shall not be liable to the Provider for any expenses paid or incurred by the Provider unless otherwise agreed in writing.

The Provider shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

The Provider shall maintain, at his/her sole expense, the following minimum insurance coverage as required by the Forsyth County Risk Manager:

A. Commercial General Liability Insurance. The Provider shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit. Such insurance coverage shall:

1. **Include the County, its officials, officers, and employees as additional insured** with respect to performance of the Services. The coverage shall contain no special limitations on the scope of protection afforded to the above listed insureds.
2. **Be primary** with respect to any insurance or self-insured retention programs covering the County, its officials, officers, and employees.

B. Business Automobile Liability Insurance. The Provider shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

- C. **Workers' Compensation and Employers' Liability Insurance.** The Provider shall maintain workers' compensation insurance with North Carolina statutory limits and employers' liability insurance with limits of not less than \$500,000 each accident.
- D. **Professional Liability Insurance.** The Provider shall maintain professional liability insurance or equivalent form with a limit of not less than \$1,000,000.
- E. **Other Insurance Requirements.** The Provider shall:
1. Prior to commencement of services, furnish the County with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the County. Certificates of Insurance shall specifically include the following statement: "Forsyth County, its officials, officers and employees are shown as additional insureds with respect to the performance of services by EBSCO Industries, Inc."
 2. Provide certified copies of endorsements and policies, if requested by the County, in lieu of or in addition to certificates of insurance.
 3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of the services.
 4. Maintain such insurance from the time services commence until services are completed.
 5. Place such insurance with insurers authorized to do business in North Carolina and having A. M. Best Company ratings of not less than A:VII. Any alternatives to this requirement shall require written approval of the County's Risk Manager.
- F. The Provider understands and acknowledges that these insurance coverage requirements are minimums and that they do not restrict or limit the hold harmless provisions of this agreement.

V.

The Provider has no authority to enter into contracts or agreements on behalf of the County.

The Provider declares that it has complied with all federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement.

The Provider agrees to comply with all state and federal occupational safety and health laws, regulations and standards relating to services covered by this contract.

The Provider hereby certifies that it is not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran, prepared pursuant to NCGS §143C-6A-4, nor will Provider utilize on this agreement any subcontractor on such list.

The Provider and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Provider to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. It is the expectation of Forsyth County that the Provider will comply, and the Provider agrees to comply, with all applicable federal immigration laws in its hiring and contracting practices relating to the services covered by this contract involving County funds, as outlined in the Resolution adopted by the Forsyth County Board of Commissioners at its regular meeting on October 23, 2006.

This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply.

IN WITNESS WHEREOF, the County and the Provider have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

By: _____

ATTEST:

Clerk to the Board

(SEAL)

PROVIDER

By: CHP 8/20/18

Tax ID Number: 63-6014186

EBSCO LICENSE AGREEMENT

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D. Authorized Sites may be added or deleted from this Agreement as mutually agreed upon by EBSCO and Licensee

E. Licensee agrees to comply with the Copyright Act of 1976, and agrees to indemnify EBSCO against any actions by Licensee that are not consistent with the Copyright Act of 1976.

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G. The Databases are not intended to replace Licensee's existing subscriptions to content available in the Databases.

H. Licensee agrees not to include any advertising in the Databases or Services.

II. LIMITED WARRANTY AND LIMITATION OF LIABILITY

A. EBSCO and its licensors disclaim all warranties, express or implied, including, but not limited to, warranties of merchantability, noninfringement, or fitness for a particular purpose. Neither EBSCO nor its licensors assume or authorize any other person to assume for EBSCO or its licensors any other liability in connection with the licensing of the Databases or the Services under this Agreement and/or its use thereof by the Licensee and Sites or Authorized Users.

B. THE MAXIMUM LIABILITY OF EBSCO AND ITS LICENSORS, IF ANY, UNDER THIS AGREEMENT, OR ARISING OUT OF ANY CLAIM RELATED TO THE PRODUCTS, FOR DIRECT DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY EBSCO FROM LICENSEE HEREUNDER UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. IN NO EVENT SHALL EBSCO OR ITS LICENSORS BE LIABLE TO LICENSEE OR ANY AUTHORIZED USER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES RELATED TO THE USE OF THE DATABASES OR SERVICES OR TO THESE TERMS AND CONDITIONS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

C. Licensee is responsible for maintaining a valid license to the third party resources configured to be used via the Services (if applicable). EBSCO disclaims any responsibility or liability for a Licensee accessing the third party resources without proper authorization.

D. EBSCO is not responsible if the third party resources accessible via the Services fail to operate properly or if the third party resources accessible via the Services cause issues for the Licensee. While EBSCO will make best efforts to help troubleshoot problems, Licensee acknowledges that certain aspects of functionality may be dependent on third party resource providers who may need to be contacted directly for resolution.

III. PRICE AND PAYMENT

A. License fees have been agreed upon by EBSCO and the Licensee, and include all retrospective issues of the Product(s) as well as updates furnished during the term of this Agreement. The Licensee's obligations of payment shall be to EBSCO or its assignee. Payments are due upon receipt of invoice(s) and will be deemed delinquent if not received within thirty (30) days. Delinquent invoices are subject to interest charges of 12% per annum on the unpaid balance (or the maximum rate allowed by law if such rate is less than 12%). The Licensee will be liable for all costs of collection. Failure or delay in rendering payments due EBSCO under this Agreement will, at EBSCO's option, constitute material breach of this Agreement. If changes are made resulting in amendments to the listing of authorized Sites, Databases, Services and pricing identified in this Agreement pro rata adjustments of the contracted price will be calculated by EBSCO and invoiced to the Licensee and/or Sites accordingly as of the date of any such changes. Payment will be due upon receipt of any additional pro rata invoices and will be deemed delinquent if not received within thirty (30) days of the invoice dates.

B. Taxes, if any, are not included in the agreed upon price and may be invoiced separately. Any taxes applicable to the Database(s) under this Agreement, whether or not such taxes are invoiced by EBSCO, will be the exclusive responsibility of the Licensee and/or Sites.

IV. TERMINATION

A. In the event of a breach of any of its obligations under this Agreement, Licensee shall have the right to remedy the breach within thirty (30) days upon receipt of written notice from EBSCO. Within the period of such notice, Licensee shall make every reasonable effort and document said effort to remedy such a breach and shall institute any reasonable procedures to prevent future occurrences of such breaches. If the Licensee fails to remedy such a breach within the period of thirty (30) days, EBSCO may (at its option) terminate this Agreement upon written notice to the Licensee.

B. If EBSCO becomes aware of a material breach of Licensee's obligations under this Agreement or a breach by Licensee or Authorized Users of the rights of EBSCO or its licensors or an infringement on the rights of EBSCO or its licensors, then EBSCO will notify the Licensee immediately in writing and shall have the right to temporarily suspend the Licensee's access to the Databases or Services. Licensee shall be given the opportunity to remedy the breach or infringement within thirty (30) days following receipt of written notice from EBSCO. Once the breach or infringement has been remedied or the offending activity halted, EBSCO shall reinstate access to the Databases or Services. If the Licensee does not satisfactorily remedy the offending activity within thirty (30) days, EBSCO may terminate this Agreement upon written notice to the Licensee.

C. The provisions set forth in Sections I, II and V of this Agreement shall survive the term of this Agreement and shall continue in force into perpetuity.

V. NOTICES OF CLAIMED COPYRIGHT INFRINGEMENT

EBSCO has appointed an agent to receive notifications of claims of copyright infringement regarding materials available or accessible on, through, or in connection with our services. Any person authorized to act for a copyright owner may notify us of such claims by contacting the following agent: Kim Stam, EBSCO Publishing, 10 Estes Street, Ipswich, MA 01938; phone: 978-356-8500; fax: 978-356-5191; email: kstam@ebSCO.com. In contacting this agent, the contacting person must provide all relevant information, including the elements of notification set forth in 17 U.S.C. 512.

VI. GENERAL

Attachment A

A. Neither EBSCO nor its licensors will be liable or deemed to be in default for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facilities shortages or failures of equipment, or failures of the Internet.

B. This Agreement and the license granted herein may not be assigned by the Licensee to any third party without written consent of EBSCO.

C. If any term or condition of this Agreement is found by a court of competent jurisdiction or administrative agency to be invalid or unenforceable, the remaining terms and conditions thereof shall remain in full force and effect so long as a valid Agreement is in effect.

D. If the Licensee and/or Sites use purchase orders in conjunction with this Agreement, then the Licensee and/or Sites agree that the following statement is hereby automatically made part of such purchase orders: "The terms and conditions set forth in the EBSCO License Agreement are made part of this purchase order and are in lieu of all terms and conditions, express or implied, in this purchase order, including any renewals hereof."

E. This Agreement represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, written and/or oral. There are no representations, warranties, promises, covenants or undertakings, except as described here.

F. EBSCO grants to the Licensee a non-transferable right to utilize any IP addresses provided by EBSCO to Licensee to be used with the Services. EBSCO does not transfer any ownership of the IP addresses it provides to Licensee. In the event of termination of the Licensee's license to the Services, the Licensee's right to utilize such IP addresses will cease.