

RESOLUTION NO. 2020 - 19

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN AGREEMENT WITH BIBLIOLABS, LLC FOR BIBLIOBOARD/INDIE AUTHOR PROJECT DATABASE.

RECITALS

WHEREAS, SJC Library Administration seeks to provide a community online platform for authors, artists, musicians, and creators to upload, store and edit content and for library indexing and curation of content service for patrons to access using a computer through the St. Johns County Libraries; and

WHEREAS, the Library obtained a proposal from Bibliolabs, LLC for the use of their proprietary software system that provides the services for the community online platform at the cost of seven thousand dollars (\$7,000.00) per year; and

WHEREAS, a single source notification was posted through DemandStar in accordance with Florida Statutes, and no alternative responses were received; and

WHEREAS, the services shall be funded by the Library; and

WHEREAS, the County has reviewed the terms, provisions, conditions and requirements of the Contract; and

WHEREAS, entering into the Contract serves a public purpose.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to execute a contract in substantially the same form and format as attached with Bibliolabs, LLC for the services set forth therein. Costs for the service shall not exceed the amount allocated and available in the Library's annual budget.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 21st day of January, 2020.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: [Signature]
Jeb S. Smith, Chair

ATTEST: Brandon Patty, Clerk

By: [Signature]
Deputy Clerk

RENDITION DATE 1/23/20



BiblioBoard Terms of Use and Conditions for Institutions and Libraries

This BIBLIOBOARD TERMS OF USE AND CONDITIONS FOR INSTITUTIONS AND LIBRARIES AND THE RIDER 1, attached hereto and incorporated herein by reference (collectively the "Agreement") is made effective as of _____, 2020 (the "Effective Date") between BiblioLabs, LLC, a South Carolina Limited Liability Company, ("BiblioLabs") with its principal office located in Charleston, South Carolina 29401 and St. John's County Public Library System (the "Licensee"), with its principal office located at Fruit Cove, FL.

1. **Purpose.** BiblioLabs has created and developed a platform-as-a-service software ("BiblioBoard Library" or "BiblioBoard") to deliver to institutions curated collections of content ("Modules"). The content ("Content") of a Module may include, but is not limited to, images, photographs, books, pamphlets, magazines, essays, sound recordings, videos or other forms of media. This Agreement establishes the terms of use and conditions that will apply to the Licensee and its Authorized Users (defined below).

This Agreement establishes the responsible usage of BiblioBoard, protects the rights of BiblioLabs, authors, publishers, curators, and the dissemination of Modules and Content to the Licensee and its Authorized Users.

2. **Authorized Users.** An Authorized User shall be individual affiliates of the Licensee (including, patrons, members, students, faculty, full and part-time staff, researchers affiliated and/or visiting, and independent contractors) and the institution of which it is a part, regardless of the physical location of such persons. An institution ("Institution") shall mean any educational non-profit or for profit institution (such as colleges, universities, and secondary schools), museums, foundations, government agencies, corporate and for profit organizations, public libraries, and scholarly societies. In the case where Licensee is a consortia of libraries and Institutions, an Authorized User shall extend to the members of the consortia (including the consortia's member's patrons, members, students, faculty, full and part time staff, researchers affiliated and/or visiting and independent contractors), regardless of the physical location of such person. Finally, an Authorized User shall also include patrons not affiliated with Licensee who are physically present at Licensed Premises (which shall mean the physical locations where the Institution provides computer terminals or other electronic devices from which Authorized Users may access BiblioBoard). Authorized Users shall be granted access to BiblioBoard through Licensee's defined Internet Protocol ("IP") addresses or alternative secured authentication system, which shall be provided by the Licensee to BiblioLabs.
3. **Grant of License.** The Licensee and its Authorized Users are hereby granted a non-exclusive right to use BiblioBoard, Modules and the Content, which BiblioBoard has granted Licensee permission to access, as set forth in Schedule A.
4. **Permitted Uses.** The Licensee and its Authorized Users may access, use, browse or view BiblioBoard and the Modules within BiblioBoard in accordance with the following permitted uses:
 - a. An Authorized User may use content within a Module subject to the Fair Use provisions of the copyright laws of the United States.
 - b. An Authorized User may use a Module and its Content for research activities, in research papers or dissertations, classroom or organizational instruction, and related classroom or organizational activities, student activities.
 - c. An Authorized User may use a Module and its Content as a part of scholarly, cultural, educational or organization presentation or workshop, if such use conforms to the customary and usual practices.
 - d. The Licensee may promote links to BiblioBoard from its website for the purpose of increasing awareness, and promoting use of BiblioBoard and the Modules.
 - e. An Authorized User may download Content within a Module (when the feature, tool or setting is activated within the Module or Content being displayed to the Authorized User) for their own personal, non-commercial use.

BiblioBoard Terms of Use and Conditions for Institutions and Libraries

- f. Licensee and its Authorized Users shall be allowed to print the Content within a Module when the feature, tool or setting is activated within the Content being displayed to an Authorized User.
- 5. Prohibited Uses.** The Licensee and its Authorized Users are strictly prohibited from using BiblioBoard in the following ways:
- a. The Licensee shall not knowingly permit anyone other than an Authorized User to use BiblioBoard or access a Module or its Content.
 - b. The Licensee or its Authorized User may not modify or create a derivative work from any Content in a Module without the prior permission of BiblioLabs.
 - c. The Licensee or its Authorized User may not remove, obscure or modify any copyright notice, watermark or other attributions notices included in BiblioBoard or a Module.
 - d. The Licensee or its Authorized User may not attempt to override, circumvent, or disable any encryption features or software protections employed in BiblioBoard or a Module.
 - e. The Licensee or its Authorized User may not use BiblioBoard or a Module for any commercial purposes, including but not limited to the sale of a Module, the sale of any Content contained in a Module, or charge admission fees for any public performance of any video available in a Module.
 - f. The Licensee or its Authorized Users may not engage in any activity that may interfere with, disrupt, or otherwise burden BiblioLabs' servers or other third-party server(s) being used or accessed in connection with BiblioBoard.
 - g. Except as permitted in Section 4, or if the Licensee is the rights holder, or if the Content is in the public domain or licensed under a Creative Commons License, the Licensee or its Authorized Users may not reproduce, or distribute any Module, or any Content from a Module outside of BiblioBoard Library.
 - h. The Licensee may not print out or download any Module or any Content to stock or replace print holdings.
 - i. The Licensee may not undertake coordinated or systematic activity to reproduce or distribute Content in bulk.
- 6. Responsibility of Licensee.**
- a. The Licensee shall notify BiblioLabs immediately of any prohibited uses they discover or are notified of by BiblioLabs or any third-party and shall cooperate with BiblioLabs in resolving problems of prohibited uses.
 - b. The Licensee shall use reasonable efforts to inform Authorized Users of the applicable restrictions and prohibited uses of BiblioBoard and the Modules, including any subsequent changes to any restrictions and prohibited uses which BiblioLabs provides notice of to the Licensee.
 - c. Access to the Platform shall be controlled by BiblioBoard through the use of pattern based IP authentication or such methodology as BiblioLabs may employ from time to time.
 - d. In the event of any unauthorized use of BiblioBoard or a Module (including Content) by an Authorized User, (1) BiblioLabs may terminate such Authorized User's access to BiblioBoard, (2) BiblioLabs may terminate the access of the IP address(es) from which such unauthorized use occurred, and/or (3) the Licensee may terminate such Authorized User's access to BiblioBoard upon BiblioLabs' request. BiblioLabs shall take none of the steps described in (1) through (3) without first providing reasonable notice to the Licensee (in no event less than 30 days) and cooperate with the Licensee to avoid recurrence of any unauthorized use.

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- e. In the event of repeated unauthorized use of BiblioBoard or any Module (including Content) by the Authorized Users of a Licensee, BiblioLabs reserves the right to terminate Licensee's (and all its Authorized Users') access to BiblioBoard.

7. Responsibility of Authorized Users.

- a. An Authorized User is responsible for maintaining the confidentiality and security of his username and/or password (if such are provided), and for all usage or activity on BiblioBoard initiated from his credentials. An Authorized User may not provide access to BiblioBoard to anyone else, including by setting up an anonymous remailer for purposes of allowing access to BiblioBoard.
- b. An Authorized User shall promptly notify BiblioLabs and where applicable the Licensee, of any known or suspected unauthorized use(s) of his account or BiblioBoard, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure or use of his username, password, and or/IP address(es). Any use of BiblioBoard beyond the scope of or in violation of these Terms and Conditions of Service, knowing use of any password or username of another, or any fraudulent or abusive, or otherwise illegal activity, may (in addition to all other remedies available to BiblioLabs at law or in equity) be grounds for termination of an account or termination of access to BiblioBoard for that IP address, without notice and at BiblioLabs' sole discretion.

- 8. Term, Fees and Payment.** The initial term of this license shall begin on _____ and end on _____. Licensee shall make a payment to BiblioLabs for the license to BiblioBoard Library and Modules pursuant to the pricing terms set out in Schedule A of this Agreement, attached hereto. Unless cancelled by the Licensee prior to the end of the initial term, and any applicable renewal term of this Agreement, this Agreement shall renew for successive one year terms unless terminated by either party in accordance with the provisions of this agreement.

- 9. Termination.** Except as otherwise provided in this Agreement, in the event that either party believes that the other has materially breached any obligations under this Agreement, or if BiblioLabs believes that Licensee has exceed the scope of the License, such party shall notify the breaching party in writing. The breaching party shall have 60 days from the receipt of notice to cure the breach and notify the non-breaching party that the cure has been affected. If the breach is not cured within 60 days the non-breaching party shall have the right to terminate the Agreement without further notice. Upon Termination of this Agreement for cause access to BiblioBoard by Licensee and its Authorized Users shall be terminated. Authorized copies of any Anthology downloaded may be retained by Licensee or its Authorized User and shall continue to be subject to the terms of this Agreement.

- 10. Confidential Information.** Licensee agrees to maintain the confidentiality of any data relating to the use of BiblioBoard by Licensee and its Authorized Users. Such data may be used by Licensee solely for internal monitoring purposes, unless such other use is approved by BiblioLabs. However, information relating to the identify of specific users and/or uses shall not be provided to any third party, unless such disclosure is required by subpoena, court order or other legal proceeding. This contract is subject to public records laws in the state of Florida.

- 11. DISCLAIMER OF WARRANTY.** LICENSEE AND ITS AUTHORIZED USERS EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF BIBLIOBOARD AND ANY MODULE IS AT THEIR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH THE LICENSEE AND ITS AUTHORIZED USER. BIBLIOBOARD AND ANY MODULE IS PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS. BIBLIOLABS EXPRESSLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS, GUARANTEES AND CONDITIONS OF ANY KIND WHETHER EXPRESS, OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BIBLIOLABS MAKES NO WARRANTIES THAT: (A) BIBLIOBOARD OR ANY MODULE WILL MEET LICENSEES OR ITS AUTHORIZED USERS REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, OR (B) THAT DEFECTS IN THE PLATFORM OR THE PLATFORM'S CONTENT WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BIBLIOLABS OR ITS REPRESENTATIVE AGENTS SHALL CREATE A

BiblioBoard Terms of Use and Conditions for Institutions and Libraries

WARRANTY. LICENSEE OR ITS AUTHORIZED USERS IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO THEIR DEVICE OR LOSS OF DATA AS A RESULT OF LICENSEE OR ITS AUTHORIZED USERS DOWLOADING, UPLOADING, ACCESSING, VIEWING, TRANSMITTING, OR RECEIVING MATERIAL OR CONTENT FROM BIBLIOBOARD.

12. LIMITATION OF LIABILITY. IN NO EVENT SHALL BIBLIOLABS BE LIABLE TO LICENSEE OR ITS AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM LICENSEE'S OR ITS AUTHORIZED USERS' USE OF BIBLIOBOARD, EVEN IF BIBLIOLABS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, BIBLIOLABS' LIABILITY TO LICENSEE OR ITS AUTHORIZED USERS FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT, IF ANY, PAID BY LICENSEE TO BIBLIOLABS DURING THE TERM OF THIS AGREEMENT.

13. MISCELLANEOUS.

- a. **Relationship of the Parties.** Nothing contained in this Agreement will create a partnership, joint venture, or agency relationship between the parties. The parties will act as independent contractors hereunder, and neither will have the authority to bind the other with respect to any third party.
- b. **Severance.** If any provision of this Agreement is held to be invalid, such invalidity will not affect the remaining provisions.
- c. **Waiver.** The failure of BiblioLabs to enforce any provision of this Agreement will not constitute a waiver of its rights to subsequently enforce the provision. The remedies specified in this Agreement are in addition to any other remedies that may be available to it at law or in equity.
- d. **Governing Law; Jurisdiction; Venue.** This Agreement shall be governed and construed by the laws of the State of Florida without regard to its conflict of laws provisions; (ii) the Licensee agrees to submit to the exclusive Personal Jurisdiction of the County of St. Johns, Florida; and Licensee agrees that regardless of any statute to the contrary, any claim or cause of action Licensee has against BiblioLabs arising out of or related to use of the Application or any Collection must be filed within one (1) year after such claim or cause of action arose or it shall be forever barred.
- e. **Notices.** All notices given pursuant to this Agreement shall be in writing and may be delivered by hand, mail, facsimile or email to the addresses listed below.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date

BiblioLabs, LLC
a South Carolina Limited Liability Company

St. Johns County Public Library System, Licensee

Its: Mitchell Davis, CEO
 100 Calhoun St.
 Suite 220
 Charleston, SC 29401
 Telephone: 843-696-0416
 Email: info@bibliolabs.com

Its: Jaime Locklear, Purchasing Manager
 Address: 500 San Sebastian View
 St. Augustine, FL 32084
 Telephone: (904) 209-0158
 Email: jlocklear@sjcpl.us

BiblioBoard Terms of Use and Conditions for Institutions and Libraries

SCHEDULE A

LICENSE FEE

License Fee for BiblioBoard:

	License Fee	Subscription Dates
Two Year Access to BiblioBoard, Core, Indie Author Program including Pressbooks, Creator	\$7,000	0/0/2020 through 0/0/2022

License Fee for SELF-e:

	License Fee	Subscription Dates
Two Year Access to SELF-e including Library Journal Select Module	Included	Same as above

License Fee for BiblioBoard Creator:

Storage	License Fee	Subscription Dates
150GB	Included	Same as above

TOTAL: \$7,000 (YEAR ONE RATE)

BiblioLabs, LLC

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Library Name	St. Johns County Public Library System
Primary Contact:	Jae Bass
Title:	Technical Services Administrator
E-mail:	jbass@sjcfl.us
Phone:	(904) 827-6924
Technical Contact:	
Title:	
E-mail:	
Phone:	
LIBRARY MAILING ADDRESS:	60 Davis Pond Blvd Fruit Cove, FL 32259
FTE or Population Served:	196,000
<i>[Type any additional notes if needed.]</i>	

Email .pdf to info@bibliolabs.com or fax to (803) 454-9419

BiblioBoard Terms of Use and Conditions for Institutions and Libraries

BiblioBoard:**

- Library Shared Cloud Service (SCS), including cloud content hosting and responsive Cloudfront patron delivery
- Open access content from library community
- Allows for publishing of open access content with Creator
- Library branding and customization tools
- Individual patron account functionality for synching, favorites, list creation, off-line bookshelf, citations, bookmarks and notes
- Free technical support for patrons and library staff
- Prioritization of product enhancement requests, participation in user groups
- MARC records for discovery, APIs for integration
- COUNTER reports for usage statistics and analysis
- Gateway monitoring to ensure 24x7 availability

**Required

Creator (Up to 150GB):

- Digital exhibit creation software, engage your community with our easy to use multi-media publishing tools and harvest the collective knowledge and artistic endeavors of your community
- Publish and contribute to the open access content initiative
- Dedicated content hosting for your library and community
- Package and share digital collections with your community or the world
- Price includes user and library product support, maintenance and enhancements

Core:

- Highly affordable primary source historical content database
- Curated by subject matter (history, biographies, etc.) in engaging anthologies to promote exploration and education
- Make accessible to local school communities for project-based learning
- Over 30,000 books, articles, images, video and audio

SELF-e:

- Library Journal product for independent authors in your community
- Dedicated and branded web portal for author e-book submissions
- Content hosting and Cloudfront delivery for your community e-books
- Services includes e-book QA, curation and editorial services
- Library Journal contests and promotions
- Free Indie State module for access to all authors in your state
- Subscribe to additional Library Journal Select ("best of") modules across a broad range of popular genres, allowing patrons to discover great new indie authors

Total a la Carte Price		\$18,650
Platinum Community Engagement Package Price	(\$11,650 discount)	\$7,000

RIDER 1

St. John's County Supplemental Terms and Conditions

1. The following St. Johns County Supplemental Terms and Conditions are hereby incorporated into the BiblioBoard Terms of Use and Conditions for Institutions and Libraries between St. Johns County, FL ("County") and BiblioLabs, LLC ("BiblioLabs") as Rider 1. In the event of a conflict or inconsistency between this Rider 1 and the BiblioBoard Terms of Use and Conditions for Institutions and Libraries, the provisions of Rider 1 shall prevail. The parties agree as follows:
2. Compensation:
 - A. The County shall compensate BiblioLabs an annual amount of seven thousand dollars (\$7,000.00), which shall be paid in advance each year, for services to be provided in accordance with the mutually agreed to BiblioBoard Terms of Use and Conditions for Institutions and Libraries and this Rider 1. The maximum amount available as compensation to BiblioLabs under this Agreement shall not exceed seven thousand dollars (\$7,000.00) for the first year, and seven thousand dollars (\$7,000.00) each additional year which shall be the amount budgeted by the St. Johns County Library Department for services delivered in accordance with the Contract Documents.
 - B. It is strictly understood that BiblioLabs is not entitled to the above-referenced amount of compensation. Rather, BiblioLabs's compensation shall be based upon BiblioLabs's providing the Services, detailed in the Contract Documents, which are not the subject of a good faith dispute.
 - C. The County reserves the right to pro-rate or refuse payment of any submitted invoice where services were not performed in accordance with the terms of the Contract Documents.
3. Availability of Funds.

The County's obligations under this Agreement are subject to the availability of lawfully appropriated funds. While the County will make all reasonable efforts, in order to provide funds needed to perform under this Agreement, (and the County agrees that it shall not execute and submit an Order Form for the purchase of any products or services from BiblioLabs unless it has properly secured funding for such purchase), the County makes no express commitment to provide such funds in any given County Fiscal Year. Moreover, it is expressly noted that BiblioLabs cannot demand that the County provide any such funds in any given County Fiscal Year.
4. Permits and Licenses.

To the extent that BiblioLabs needs to obtain/require, and maintain permits, certifications, and/or licenses, in order to perform the Services noted in this Agreement, then BiblioLabs Group, Inc shall be responsible for securing, obtaining/acquiring, and maintaining, at BiblioLabs's sole expense, any, and all, permits, certifications, licenses, and/or approvals required by Federal, State, and/or County law, rule, regulation, or ordinance.
5. Independent Contractor Relationship.

BiblioLabs is, and shall be, in the performance of all work services and activities under this Contract Agreement, an independent contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to BiblioLabs's sole direction, supervision, and control.

BiblioLabs shall exercise control over the means and manner in which it and its employees perform the work, and in all respects BiblioLabs's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees or agents of the County. BiblioLabs does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

6. Amendments to this Contract Agreement.

Both the County and BiblioLabs acknowledge that this Agreement constitutes the complete agreement and understanding of the parties. Further, both the County and BiblioLabs acknowledge that any change, amendment, modification, revision, or extension of this Agreement (other than termination, as noted elsewhere in this Agreement) shall be in writing, and shall be executed by duly authorized representatives of both the County, and BiblioLabs.

7. Duration & Renewal.

This Agreement shall become effective upon signature by all parties, shall be in effect for an initial contract term of two (2) calendar years, and may be renewed, in unlimited one (1) year periods, upon satisfactory performance by BiblioLabs, mutual agreement by both parties, and the availability of funds. While this Agreement may be renewed as stated in this Article, it is expressly noted that St. Johns County is under no obligation to renew or extend this Agreement. It is further expressly understood that the option of renewal is exercisable only by St. Johns County, and only upon the County's determination that BiblioLabs has satisfactorily performed the Services noted in the Contract Documents.

8. Public Records

A. The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State and Federal provisions. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

B. In accordance with Florida law, to the extent that BiblioLabs's performance under this Agreement constitutes an act on behalf of the County, BiblioLabs shall provide access to all public records made or received by BiblioLabs in conjunction with this Agreement. Specifically, if BiblioLabs is expressly authorized, and acts on behalf of the County under this Agreement, BiblioLabs shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services described herein;
- (2) Provide the public with access to public records related to this Agreement on the same terms and conditions that the County would provide the records, and at a cost that does not exceed the costs provided in Chapter 119, Florida States, or as otherwise provided by applicable law;
- (3) Ensure that public records related to this Agreement that are exempt or confidential and exempt from public disclosure are not disclosed except as authorized by applicable law; and,
- (4) Meet all requirements for retaining public records, and transfer at BiblioLabs's sole cost and expense, all public records in the possession of BiblioLabs upon termination of this Agreement. BiblioLabs Group, Inc shall destroy any duplicate records that are exempt or confidential and exempt from public disclosure requirements in accordance with applicable State and Federal provisions. Any public records stored electronically must be provided to the County in a format that is compatible with information technology systems maintained by the County.

C. Failure by BiblioLabs to grant such public access shall be grounds for immediate, unilateral termination of this Agreement by the County. BiblioLabs shall promptly provide the County notice of any request to inspect or copy public records related to this Agreement in BiblioLabs's possession and shall promptly provide the County a copy of BiblioLabs's response to each such request.

7. Severability.

If any word, phrase, sentence, part, subsection, section or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining

portions of this Agreement/Contract, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

8. Termination.

This Agreement may be terminated by the County without cause upon at least sixty (60) calendar days advance written notice to BiblioLabs of such termination without cause. This Agreement may be terminated by the County with cause provided that BiblioLabs Group, Inc does not cure such deficiency within thirty (30) days of written notice by County of BiblioLabs's breach. Such written notice shall indicate the exact cause for termination.

9. Notice of Default / Right to Cure

A. Should BiblioLabs fail to perform (default) under the terms of this Agreement, then the County shall provide written notice to BiblioLabs, which such notice shall include a timeframe of no fewer than five (5) consecutive calendar days in which to cure the default. Failure by BiblioLabs to cure the default, or take acceptable corrective action within the timeframe provided in the notice of default (or any such amount of time as mutually agreed to by the parties in writing), shall constitute cause for termination of this Agreement.

B. It is expressly noted that, should the County issue more than one notice of default to BiblioLabs during the term of this Agreement, such action shall constitute cause for termination of this Agreement.

C. Consistent with other provisions in this Agreement, BiblioLabs shall be paid for Services authorized and due under this Agreement signed between the parties. If the County terminates because of a BiblioLabs breach, BiblioLabs will refund any unused and prepaid fees. If the County terminates without cause, BiblioLabs will not refund any prepaid fees.

D. Upon receipt of notice of termination, except as otherwise directed by the County in writing, BiblioLabs shall:

1. Stop work on the date to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
3. This not a works for hire arrangement. Customer is not receiving any work product from BiblioLabs.
4. Continue and complete all parts of the work that have not been terminated.

10. Personnel.

BiblioLabs represents that it has, or shall secure at its own expense, all necessary personnel required to perform the Services as noted in the Contract Documents. It is expressly understood that such personnel shall not be employees of, or have any contractual relationship with the County. All of the Services required hereunder shall be performed by BiblioLabs, or under its supervision. All personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under federal, state and local law to perform such Services. Any changes or substitutions in BiblioLabs's key personnel must be made known to the County's representative and written approval granted by the County before said change or substitution can become effective. BiblioLabs warrants that all Services shall be performed by skilled and competent personnel to the highest professional standards in the field.

11. Subcontracting.

The County reserves the right to approve the use of any subcontractor, or to reject the selection of a particular subcontractor to perform any Implementation Services work described in the Contract Documents. BiblioLabs is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. If a subcontractor fails to satisfactorily perform in accordance with the Contract Documents, and it is necessary to replace the subcontractor to complete the Implementation Services work in a timely fashion, BiblioLabs Group, Inc shall promptly do so. The County reserves the right to disqualify any subcontractor, vendor, or material supplier based upon prior unsatisfactory performance.

12. Governing Law and Venue.

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or

legal action arising under this Agreement shall be in St. Johns County, Florida.

13. Insurance.

BiblioLabs, at its sole expense, shall secure and maintain insurance coverage in the types and amounts provided in the attached Insurance Requirements for the duration of this Agreement.

BiblioLabs shall not commence work under this Agreement until it has obtained all insurance required under this section. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. BiblioLabs shall furnish proof of Insurance to the County prior to the commencement of operations. The Certificate(s) shall clearly indicate BiblioLabs has obtained insurance of the type, amount, and classification as required by contract and that it will provide written notice within thirty (30) days of a material change or cancellation of the insurance. Compliance with the foregoing requirements shall not relieve BiblioLabs of its liability and obligations under this Agreement.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida
500 San Sebastian View
St. Augustine, FL 32084

BiblioLabs shall maintain during the life of this Agreement, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate to protect BiblioLabs from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by BiblioLabs or by anyone directly employed by or contracting with BiblioLabs.

BiblioLabs shall maintain during the life of this Agreement, Technology Errors & Omissions/Professional Liability with minimum limits of \$3,000,000 per occurrence and aggregate. The Technology Errors & Omissions/Professional Liability Insurance shall cover BiblioLabs and third parties, at a minimum, the following: Liability for Technology Products/Services, Data Breach, Media Content, Privacy Liability, and Network Security. Coverage retro date shall be prior to commencement of job.

BiblioLabs shall maintain during the life of this Agreement, Cyber Liability & Data Storage Insurance with minimum limits of \$2,000,000 per occurrence, \$3,000,000 aggregate. The Cyber Liability Insurance shall cover, at a minimum, the following: Data Loss and System Damage Liability; Security Liability; Privacy Liability; and Privacy/Security Breach Response Coverage, including Notification Expenses. The Cyber Liability Insurance may be included as part of the Professional Liability Insurance required above.

BiblioLabs shall maintain during the life of this Agreement, Comprehensive Automobile Liability Insurance with minimum limits of \$300,000 combined single limit for bodily injury and property damage liability to protect BiblioLabs Group, Inc from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned vehicles, including rented/hired automobiles whether such operations be by BiblioLabs or by anyone directly or indirectly employed by a BiblioLabs.

BiblioLabs shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as is required by the law for all of its employees per Florida Statute 440.02.

In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

14. Indemnification.

BiblioLabs shall indemnify, defend and hold harmless the County and its officers and employees from claims, liabilities, damages, losses, and costs, including court costs, expert witness and professional consultation services,

and attorneys' fees, arising out of BiblioLabs's errors, omissions, or negligence. BiblioLabs shall not be liable to, nor be required to indemnify the County for, any portions of damages arising out of any error, omission, or negligence of the County or its officers and employees.

15. Successors & Assigns.

The County and BiblioLabs each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the County nor BiblioLabs shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other, which consent not to be unreasonably withheld. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and BiblioLabs.

16. Remedies.

Unless expressly stated, no remedy herein conferred upon any party is intended to be exclusive, or any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees as may be awarded by a court of competent jurisdiction.

17. Conflict of Interest.

BiblioLabs represents that it presently has no interest and shall acquire no interest, either directly or indirectly, which would conflict in any manner with the performance of services required hereunder. BiblioLabs further represents, to the best of its knowledge, that no person having any interest shall be employed for said performance. BiblioLabs shall promptly notify the County in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence BiblioLabs's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that BiblioLabs may undertake and request an opinion of BiblioLabs, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by BiblioLabs. The County agrees to notify BiblioLabs of its opinion by certified mail within 30 days of receipt of notification by BiblioLabs. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by BiblioLabs, the County shall so state in the notification and BiblioLabs shall, at his/her option enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by BiblioLabs under the terms of this Contract Agreement.

18. Excusable Delays.

BiblioLabs shall not be considered in default by reason of any delay in performance if such delay arises out of causes reasonably beyond BiblioLabs's control and without its fault or negligence. Such cases may include, but are not limited to: acts of God; the County's omissive and commissive failures; natural or public health emergencies; freight embargoes; and severe weather conditions. If delay is caused by the failure of BiblioLabs's subcontractor(s) to perform or make progress, and if such delay arises out of causes reasonably beyond the control of BiblioLabs and its subcontractor(s) and is without the fault or negligence of either of them, BiblioLabs shall not be deemed to be in default. Upon BiblioLabs's request, the County shall consider the facts and extent of any delay in performing the work and, if BiblioLabs's failure to perform was without its fault or negligence, the Contract Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the County's right to change, terminate, or stop any or all of the Work at any time.

19. Arrears.

BiblioLabs shall not pledge the County's credit, or make it a guarantor of payment, or surety for any contract, debt,

obligation, judgment, lien, or any form of indebtedness. BiblioLabs further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

20. Ownership of Documents.

BiblioLabs acknowledges that all information provided by County to BiblioLabs shall remain solely and exclusively owned by County. Finished and unfinished documents or materials prepared by BiblioLabs under this Agreement remains the property of BiblioLabs. BiblioLabs is granting County a license to use the software applications and any documents developed and/or produced in connection with that license, and subject to the software license agreement; such licenses contain confidential or proprietary information and shall remain the property of BiblioLabs. The rights County will receive under the license agreement are rights to use the BiblioLabs software license applications and related materials. County is not entitled to any rights to the title or ownership of any source code, object code, design and design documents, flow charts and/or specifications, or any work product produced by BiblioLabs, such as reports, schedules, displays, exhibits, other documentation, etc. BiblioLabs claims all rights to its proprietary and confidential information including, but not limited to, its pricing, terms, conditions, specifications, software documentation, the BiblioLabs terms, and Services Scope Statement, Professional Services Work Order or Statement of Work, or any other similar document.

21. Contingent Fees.

BiblioLabs warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for BiblioLabs to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for BiblioLabs, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

22. Access & Audits.

BiblioLabs shall maintain adequate records to justify all charges, expenses, and costs paid by County under this Agreement for at least three (3) years after completion of this Agreement. The County shall have access to such BiblioLabs books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the County's cost, upon ten (10) days written notice.

23. Nondiscrimination.

BiblioLabs warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age or national origin.

24. Entirety of Contractual Agreement.

The County and BiblioLabs Group, Inc agree that this Agreement, signed by both parties sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein, or are incorporated by reference into this Agreement. None of the provisions, terms, conditions, requirements, or responsibilities noted in this Agreement may be amended, revised, deleted, altered, or otherwise changed, modified, or superseded, except by written instrument, duly executed by authorized representatives of both the County, and BiblioLabs.

25. Enforcement Costs.

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all reasonable expenses even if not taxable as court costs (including, without limitation, all such reasonable fees, costs and expenses incident to appeals), incurred in that action or proceedings, in addition to any other relief to which such party or parties may be entitled, and if awarded by a court of competent jurisdiction.

26. Authority to Practice.

BiblioLabs hereby represents and warrants that it has and shall continue to maintain all license and approvals required to conduct business, and that it shall at all times, conduct its business activities in a reputable manner.

27. Severability.

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such items or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

28. Amendments & Modifications.

No amendments or modifications of this Agreement shall be valid unless in writing and signed by each of the parties. If the County instructs in writing, BiblioLabs shall suspend work on that portion of the project, pending the County's decision to proceed with the change. If the County elects to make the change, the County shall issue a Change Order for changes, or a contract change order, if the original contract is to be changed or amended BiblioLabs shall not commence work on any such change until such written change order has been issued and signed by each of the parties.

29. Florida Law & Venue.

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in St. Johns County, Florida.

30. Arbitration.

Neither party shall be obligated to arbitrate or permit any arbitration with respect to resolving any disputes under any of the Contract Documents or in connection with the project in any manner whatsoever.

31. Notices.

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

St. Johns County Purchasing Department
Attn: Jaime Locklear, Purchasing Manager
500 San Sebastian View
St. Augustine, FL 32084

and if sent to BiblioLabs, LLC shall be mailed to:

BiblioLabs, LLC
Attn: Mitchell Davis, CEO
100 Calhoun St.
Charleston, SC 29401

32. Headings.

The heading preceding the articles and sections herein are solely for convenience of reference and shall not constitute a part of this Agreement, or affect its meaning, construction or effect.

33. No Third Party Beneficiaries.

Both the County and BiblioLabs explicitly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

34. Use of County Logo.

Pursuant to, and consistent with, St. Johns County Ordinance 92-2 and Administrative Policy 101.3, BiblioLabs may

not manufacture, use, display, or otherwise use any facsimile or reproduction of the County Seal/Logo without express written approval of the Board of County Commissioners of St. Johns County, Florida.

35. Survival.

It is explicitly noted that the following provisions of this Agreement, to the extent necessary, shall survive any suspension, termination, cancellation, revocation, and/or non-renewal of this Agreement, and therefore shall be both applicable and enforceable beyond any suspension, termination, cancellation, revocation, and/or non-renewal: (1) Truth-in-Negotiation; (2) Federal and State Taxes; (3) Insurance; (4) Indemnification; (5) Access and Audits; (6) Enforcement Costs; and (7) Access to Records.



St. Johns County Board of County Commissioners

Purchasing Division

NOTICE OF SINGLE OR SOLE SOURCE PROCUREMENT

St Johns County, FL
Purchasing Division
500 San Sebastian View
St. Augustine, FL 32084
Office: (904) 209-0150

Sole/Single Source No: SS No: 20-09

Date Posted: November 25, 2019

Written Response due: December 6, 2019 by or before 3:00PM

RESPONSES SUBMITTED TO:

Name: Erin Edwards

Email Address: eedwards@sjcfl.us

Phone Number: (904) 209-0164

This is NOT a formal solicitation (RFB, RFP, RFQ) and there are no solicitation documents available. A contract or purchase order is proposed for the product(s) or service(s) identified below. St Johns County, FL, intends to negotiate and award a PO or contract to the vendor indicated in accordance with Florida State Statute 287.057(5)(c) and 120.57(3). Any responses received as a result of this Notice shall be considered solely for the purpose of determining whether an equivalent product or service can be provided by alternative source(s), which may warrant a competitive solicitation. Responses will NOT be considered as proposals, bids or quotes.

PRODUCT/SERVICE REQUIRED: BiblioLabs, LLC

DESCRIPTION: BiblioBoard Library is a hosted software solution designed to allow libraries to provide access without user limitations to digital content in book, image, audio and video formats. BiblioBoard Creator is a unique suite of digital publishing tools that allows libraries to curate content from the web and institutional repositories or upload content to make it available on BiblioBoard Library. Indie Author Project is the only program available for purchase today that helps libraries streamline accepting, licensing, vetting, and providing access to content from local self-published authors. In addition, Library Journal is working exclusively with BiblioLabs to provide curatorial services for this content.

INTENDED SOLE/SINGLE SOURCE CONTRACTOR/VENDOR: BiblioLabs, LLC

PROPOSED COST: \$14,000.00 (\$7,000.00 per annum for 2 years)

PROPOSED CONTRACT/PURCHASE TERM: Intent is for Agreement to have an initial two (2) year term with unlimited optional one (1) year renewals.

JUSTIFICATION FOR SOLE/SINGLE SOURCE: Preferred vendor due to being sole provider to libraries for the following services: BiblioBoard Library, BiblioBoard Creator, and Indie Author Project. The database and software is developed, sold and distributed exclusively by BiblioLabs, LLC. Indie Author Project is the only program available for purchase today that helps libraries streamline accepting, licensing, vetting, and providing access to content from local self-published authors.

RESPONSE TO SOLE/SINGLE SOURCE:

Firms/Vendors who are capable of providing an equivalent product and/or service as stated herein may submit the following, in writing: Company Name, address, point of contact, contact information (phone #, email, etc.) and statement, description and/or capability to provide an equivalent product/service. Responses shall be submitted to the Point of Contact shown above, by or before the due date provided herein. Responses received after the provided due date shall not be considered.

ATTACHMENTS: N/A



October 30, 2019

To Whom It May Concern:

This letter is written to confirm that BiblioBoard Library, BiblioBoard Creator, and Indie Author Project are sole source products. The database and software is developed, sold and distributed exclusively by BiblioLabs, LLC.

BiblioLabs maintains all copyright privileges for these products, and these products must be purchased directly from the company. There are no agents or dealers authorized to represent these products in the U.S.

BiblioBoard Library is a hosted software solution designed to allow libraries to provide access without user limitations to digital content in book, image, audio and video formats. BiblioBoard Creator is a unique suite of digital publishing tools that allows libraries to curate content from the web and institutional repositories or upload content to make it available on BiblioBoard Library. Indie Author Project is the only program available for purchase today that helps libraries streamline accepting, licensing, vetting, and providing access to content from local self-published authors. In addition, *Library Journal* is working exclusively with BiblioLabs to provide curatorial services for this content.

BiblioLabs warrants that no other products are available that would serve the same purpose or function and there is only one price for the above-named product because of exclusive distribution rights.

If you desire additional information, please feel free to contact me.

Sincerely,

Andrew Roskin, CEO
BiblioLabs, LLC
100 Calhoun St., #220
Charleston, SC 29401
843-696-0416