

**FORSYTH COUNTY
BOARD OF COMMISSIONERS**MEETING DATE: SEPTEMBER 26, 2019AGENDA ITEM NUMBER: 13

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT BETWEEN FORSYTH COUNTY AND MCNAUGHTON, A DIVISION OF BRODART CO., TO PROVIDE THE PUBLIC LIBRARY WITH LEASED BOOKS (FORSYTH COUNTY PUBLIC LIBRARY)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

Agreement between Forsyth County and McNaughton, a division of Brodart Co., to provide the Library system with access to, and use of, leased books at an annual cost not to exceed \$221,100.00, a planned expenditure covered by allocated funds in the Library's FY-20 Adopted Budget. These books will:

1. Supply popular titles for the library collection at the Central library, nine branch libraries, two bookmobiles and adult outreach;
2. Assist with filling patron reserves; and
3. Provide permanent collection development of fiction and non-fiction titles.

ATTACHMENTS: YES NOSIGNATURE: _____ DATE: _____
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT BETWEEN
FORSYTH COUNTY AND MCNAUGHTON, A DIVISION OF BRODART CO., TO
PROVIDE THE PUBLIC LIBRARY WITH LEASED BOOKS
(FORSYTH COUNTY PUBLIC LIBRARY)**

WHEREAS the Forsyth County Public Library is seeking to renew a contract with McNaughton, a Division of Brodart Co., to continue providing Library staff and customers with access to, and use of, leased books. The average allocation to each branch library shall be approximately 20-30 books per month, decided upon each branches item circulation, with the Central Library receiving the majority of the collection, at an annual cost not to exceed \$221,100.00, a planned expenditure covered by allocated funds in the Library's 2020 fiscal year budget;

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Board of Commissioners hereby authorizes the County Manager or his designee, to execute a contract, on behalf of Forsyth County and its Public Library, with McNaughton, a Division of Brodart Co., to provide the Library with access to and use of leased books for an annual cost not to exceed \$221,100.00, and to execute subsequent contracts and contract amendments, within budgeted appropriations, in the current and future fiscal years, for a maximum of three years duration, terminating no later than June 30, 2022, 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 26th day of September 2019.

STATE OF NORTH CAROLINA

FORSYTH COUNTY

AGREEMENT

THIS AGREEMENT, made and effective this 1st day of September, 2019, by and between Forsyth County, North Carolina (the "County"), and McNaughton, A division of Brodart Co. (the "Provider");

For the purpose and subject to the terms and conditions hereinafter set forth, the County and the Provider hereby agree as follows:

I. Services. Provider shall perform such services as set forth in Attachments A attached hereto.

The following documents, attached hereto, are incorporated herein:

Attachment A labeled McNaughton Subscription Agreement

II. Term. The services of the Provider shall begin on September 1, 2019, unless sooner terminated by mutual consent or as hereinafter provided, shall be provided until August 31, 2020; provided that the County shall have the right to terminate this Agreement, without cause, upon 30 days' notice in writing to the other party, or upon 7 days written notice if the Provider breaches the Agreement.

III. Compensation. As full compensation for the Provider's services, the County agrees to pay the Provider the sum of \$221,100.00, payable in installments. The Provider shall bill the County monthly for services rendered during the preceding 30 days. The County shall pay all such bills within the following 15 days provided all elements of the Agreement are satisfactorily met. Total payments under this contract are not to exceed \$221,100.00.

IV. Independent Contractor. 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, its employees, and subcontractors shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. 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 is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement. The Provider shall comply with the North Carolina Workers' Compensation Act and shall ensure that its subcontractors also comply. 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 Provider has no authority to enter into contracts or agreements on behalf 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.

V. Indemnification. The Provider agrees to indemnify, defend, and 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 relating to this Agreement or services provided pursuant to it.

VI. Insurance. The Provider shall maintain, at its sole expense, insurance coverage as required by the Forsyth County Risk Manager.

Insurance. The Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property for the duration of the contract which may arise from or in connection with the performance of work hereunder by the Contractor, his agents, representatives, or subcontractors.

- A. Commercial General Liability Insurance. The Contractor 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 be no less than three times the occurrence limit. Such insurance shall:
 - a. **Include Forsyth County, its officials, officers, and employees as additional insureds** with respect to performance of the Services. The coverage shall contain no special limitation on the scope of protection afforded to the above listed insureds. Please mail certificate of insurance to Forsyth County Finance Department, Attn: Teresa Everhart, 201 North Chestnut Street, Winston-Salem, NC 27101.
 - b. 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 Contractor 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 Contractor shall maintain workers' compensation insurance with North Carolina statutory limits and employers' liability insurance with limits of not less than \$100,000 each accident.
- D. Other Insurance Requirements. The Contractor shall:
 - a. Prior to commencement of services, furnish the County with properly executed certificates of insurance which shall clearly evidence all insurance required in this section. Provide copies of endorsements and policies, if requested by the County, in lieu of or in addition to certificates of insurance.

- b. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of the services.
- c. Maintain such insurance from the time services commence until services are completed.
- d. 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.

E. The Contractor 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.

VII. **County Property.** Provider agrees that it shall be responsible for the proper custody and care of any property furnished to it by the County for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. Any information, data, documents, studies, or reports given to or prepared or assembled by the Provider under this Agreement shall be kept confidential and not divulged or made available to any individual or organization without prior written approval of the County.

VIII. **Notice.** All notices permitted or required to be given by one party to the other party shall be addressed and delivered in writing as follows:

For the County:

Forsyth County Public Library
Danielle Ippolito, Fiscal Technician
660 W. Fifth St.
Winston Salem, North Carolina, 27101
ippolitic@forsyth.cc

For the Provider:

Brodart, Co.
Audra Flanders, Subscription Services Customer Care Associate
500 Arch St.
Williamsport, PA 17701
audra.flanders@brodart.com

IX. **Assignment.** The Provider may not assign its obligations under this Agreement unless it has received prior written approval from the County, which may be withheld at the sole discretion of the County.

X. **Waiver.** No action or failure to act by the County shall constitute a waiver of any of its rights or remedies or as approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

- XI. Governing Law.** This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply. The venue for any legal proceeding shall be in Forsyth County, North Carolina.
- XII. Nonappropriation.** Notwithstanding anything to the contrary herein, in the event that public funds are unavailable and not appropriated for the performance of the County's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the County 30 days after written notice of the unavailability and non-appropriation of public funds. In the event of a change in the County's statutory authority, mandate, or mandated functions by state or federal legislative or regulatory actions, which adversely affects the County's authority or duty to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the County 30 days after written notice of such limitation or change in the County's legal authority or duty.
- XIII. Survival of Provisions.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of services and termination of this Agreement.
- XIV. Modification.** This Agreement may only be modified in writing and signed by both the Provider and by the County Manager or other authorized County official.
- XV. Conflict with Attachments.** In the event of any conflict between the provisions in this Agreement and any provisions in an attachment thereto, the provisions in this Agreement shall take precedence over any provision in an Attachment.
- XVI. Miscellaneous.** The Provider shall comply with all applicable laws and regulations including but not limited to 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 and all federal immigration laws in its hiring and contracting practices. 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. Provider hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur), Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43, 147-86.58, and 147-86.81, nor will Provider utilize for this Agreement any subcontractor on such lists. This agreement is intended for the benefit of the County and the Provider and not for any other party. If any provision of this Agreement shall be unenforceable, the remainder of the Agreement shall be enforceable to the extent allowed by law.

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

Attachment A

McNaughton Subscription Agreement

THIS AGREEMENT to be effective September 2019 between MCNAUGHTON, A DIVISION OF BRODART CO., ("Company") and FORSYTH CNTY LIB (B/T 322921) at 660 W 5TH ST, WINSTON-SALEM NC 27101 ("Customer").

1. Allowance usage and allotment

- 1.1 For Book Allowance, each item supplied will be charged as one allowance unless the book retails for more than the cutoff subscribed to, in which case the charge will be higher.
- 1.2 For Point Allowance, the number of items supplied will be determined by the point values corresponding to the list price of the item(s), provided in each monthly selection list.
- 1.3 Allowance will be allotted in accordance with the Customer's invoice schedule. That is, if the Customer elects to receive and pay invoices monthly, allowance will be allotted monthly; if the Customer elects to receive and pay invoices annually, allowance will be allotted annually.
- 1.4 Unused allowance will 'roll over' into the next subscription year as long as you continue your service. Unused allowance will be lost when the service is terminated.

2. Returning leased items

- 2.1 The Customer shall return to the Company any leased items in excess of the Allowable Inventory subscribed to.
- 2.2 Return shipping expenses will be paid by the Company, using Company supplied shipping labels. Return shipments made without Company supplied labels may be subject to shipping charges.
- 2.3 Returning leased items does not affect the number of items available to order.

3. Purchasing leased items

- 3.1 If the subscription includes leased materials, the Customer will have the privilege of transferring leased items to its permanent collection by purchasing them at the volume discount sale prices.
- 3.2 Purchasing leased items does not affect the number of items available to order.

4. Lost or Stolen leased items

- 4.1 The Customer shall report, at least twice annually, any items lost or stolen from the leased collection.
- 4.2 Up to 10% of the Customer's annual Allowance for leased items lost or stolen in circulation will be adjusted at no cost. Any item beyond that amount will be invoiced according to the current McNaughton inventory purchase price.

5. Payment

- 5.1 The Customer shall make payment to the Company the monthly amount agreed to, plus applicable taxes, within 30 days from date of invoice.
- 5.2 Payments made annually will be allowed a discount of 2%, provided payment is made within 60 days from the date of invoice.

6. Term

- 6.1 This Agreement to be in effect for a period of 12 months ~~and to renew itself thereafter unless canceled.~~ *On*
- 6.2 The subscription plan may be increased at any time at the Customer's request.
- 6.3 The subscription plan may be decreased with the provision of 60 days notice due to potential pre-publication orders.
- 6.4 The Customer will be price protected during the year specified by the Agreement, provided signed Agreement is returned to the Company 30 days prior to specified effective date. Afterwards, the Customer will be subject to any necessary price increase at the expiration of the Agreement or end of the prepayment period, whichever comes first.

7. Termination

- 7.1 ~~This Agreement may be canceled by the Customer at the expiration of specified contract period, with the provision of 60 days notice.~~ *60*
- 7.2 The Customer will return and/or purchase all leased materials in inventory within 90 days after the effective date of termination.
- 7.3 The Company reserves the right to cancel service to the Customer with the provision of 60 days written notice and to approve or disapprove any large purchases of leased materials at the time of termination.

Customer signature

Printed name and title

Date

Lisa Miosi

Company signature

Lisa K. Miosi, Director, Customer Care

Printed name and title

July 26, 2019

Date

FORSYTH COUNTY, NORTH CAROLINA

(SEAL)

By: J. Dudley Watts, Jr, County Manager

Date: _____

ATTEST:

Ashleigh M. Sloop, Clerk to the Board

Date: _____

PROVIDER

(SEAL)

By: Lisa Miosi

Printed Name: Lisa Miosi

Title: VP Customer Care

Date: 8/7/19