

STATE OF TEXAS §
§
COUNTY OF FORT BEND §

ADDENDUM TO BIBLIOTHECA, LLC'S AGREEMENT

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and bibliotheca, ("bibliotheca"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WHEREAS, subject to the changes herein, the parties have executed and accepted bibliotheca's Quote (QUO-US08480) (the "Agreement"), attached hereto as Exhibit "A" and incorporated fully by reference, for the purchase of specified selfCheck 500D desktop kiosks and shipping services (collectively the "Services"); and

WHEREAS, County desires that bibliotheca provide Services as will be more specifically described in this Agreement; and

WHEREAS, bibliotheca represents that it is qualified and desires to perform such Services;
and

WHEREAS, the Texas County Purchasing Act, § 262.024(a)(7) Texas Local Government Code, exempts from competitive bidding contracts items that can be obtained from only one source; and

WHEREAS, bibliotheca is the sole source provider of the selfCheck 500D desktop kiosk and associated services, as indicated by the letter attached hereto as Exhibit "B" and incorporated fully by reference; and

WHEREAS, the Fort Bend County Commissioners Court specifically finds that this Agreement is a sole source agreement and therefore grants an exemption from competitive bidding, insofar as any competitive bidding statute might apply; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

1. **Scope of Services.** Subject to this Addendum, bibliotheca will render Services to County as described in Exhibits A and B.
2. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. Bibliotheca may submit invoice(s) electronically in a form acceptable to County via: apauditor@fortbendcountytexas.gov. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which

appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE. County reserves the right to withhold payment pending verification of satisfactory work performed.

3. **Limit of Appropriation.** Bibliotheca clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Fifty-Four Thousand, Six Hundred Seven and 36/100 dollars (\$54,607.36), specifically allocated to fully discharge any and all liabilities County may incur. Bibliotheca does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that bibliotheca may become entitled to and the total maximum sum that County may become liable to pay to bibliotheca shall not under any conditions, circumstances, or interpretations thereof exceed Fifty-Four Thousand, Six Hundred Seven and 36/100 dollars (\$54,607.36). In no event will the amount paid by the County for all services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
4. **Public Information Act and Open Meetings Act.** Bibliotheca expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by bibliotheca shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Bibliotheca expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.

5. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless bibliotheca or any other party for any reason are hereby deleted. Bibliotheca shall indemnify and defend County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of bibliotheca, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of bibliotheca or any of bibliotheca's agents, servants or employees.

6. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by bibliotheca in any way associated with the Agreement.
7. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, bibliotheca hereby verifies that bibliotheca and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
 - b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, bibliotheca does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, bibliotheca does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, bibliotheca does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
8. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

9. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, BIBLIOTHECA ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
10. **Use of Customer Name.** Bibliotheca may use County's name without County's prior written consent only in any of bibliotheca's customer lists, any other use must be approved in advance by County.
11. **Product Assurance.** Bibliotheca represents and warrants that its hardware, software and any related systems and/or services related to its software and/or hardware (collectively, the "Product") furnished by bibliotheca to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. bibliotheca will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of bibliotheca's Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and bibliotheca's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the parties.
12. **Performance Warranty.** Bibliotheca warrants to County that bibliotheca has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and bibliotheca will apply that skill and knowledge with care and diligence to ensure that the services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- Bibliotheca warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A and Exhibit B.
13. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls to the extent of the conflict.
14. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
15. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
16. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

17. **Compliance with Laws.** Bibliotheca shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, bibliotheca shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
18. **Independent Contractor.** In the performance of work or services hereunder, bibliotheca shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of bibliotheca or, where permitted, of its subcontractors. Bibliotheca and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
19. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will. This Agreement is effective upon execution by both parties.

FORT BEND COUNTY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

BIBLIOTHECA, LLC



Authorized Agent – Signature

Michael Burstein

Authorized Agent- Printed Name

CFO

Title

12/21/22

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: bibliotheca's Quote (QUO-US08480); and
Exhibit B: Sole Source Letter

Exhibit A



Bill To

Jill Sumpter
Fort Bend County Auditor
1003 Golfview Dr
Richmond TX 77469
United States

Ship To

Jill Sumpter
Fort Bend County Auditor
1003 Golfview Dr
Richmond TX 77469
United States

Quote

QUO-US08480

Date

10/27/2022

Customer:

C0000082-US

Payment Terms:

Net 30 Days

Quote Expiration:

12/20/2022

Sales Rep:

Kyle Kigin

Memo (External):

8 selfCheck 500 desktop kiosks to be delivered to the following locations:

1. (2) Kiosks – University Branch Library 14010 University Blvd
Sugar Land, Texas 77479
2. (3) Kiosks – George Memorial Library 1001 Golfview Drive
Richmond, Texas 77469
3. (3) Kiosks – First Colony Branch Library 2121 Austin Parkway
Sugar Land, Texas 77479

Pricing valid until December 20, 2022.

Item	Quantity	Net Price	Net Extended
Freight White Glove Service SHP000002-000	1	6,000.00	6,000.00
selfCheck 500D desktop kiosk SCK500001-000	8	6,075.92	48,607.36
Total:			54,607.36
Currency:			US Dollar

Terms and Conditions:

All prices including Service and Maintenance do not include any applicable sales tax. If tax exempt, A copy of Tax Exemption Certificate is required with purchase order for all taxexempt customers.

Terms are NET 30 Days from Date of Invoice. Invoice is generated at the time of Shipment.

Quotations are good for 60 days. All dates are based on ship dates. Order must ship within the 60-day window.

After 60 days, quotation expires. Contact Bibliotheca for a New Quotation.

A 20% restocking fee, in addition to in-bound and out-bound shipping, will be charged for all returns.

Submit Purchase Order by fax to 877-689-2269 or by email to orders-us@bibliotheca.com.



Accepted By: _____

Accepted Date: _____

Customer Purchase Order Number: _____

Exhibit B

10/11/2022

Sarah Sanchez
Fort Bend County Library
301 Jackson St. Suite 201
Richmond, TX 77469

RE: Bibliotheca Sole Source Letter

Dear Sarah:

This sole source letter is to confirm that Bibliotheca provides certain products that are unique to the library market, and as such, can only be supported and maintained by Bibliotheca technicians for optimal performance and durability.

Furthermore, the costs associated with continuing to use Bibliotheca as your support and maintenance provider are significantly less, as Bibliotheca technicians would not require any additional training and would already have the required parts and tools.

Sincerely,

Mary K Zilles, VP of Business Development & Sales Administration
m.zilles@bibliotheca.com | 678-336-7980 X 310
3169 Holcomb Bridge Road, Suite 200
Norcross, GA 30071