



**Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form**

|               |                         |                    |                |
|---------------|-------------------------|--------------------|----------------|
| Department    | Library                 | Department Contact | Belinda Catman |
| Contact Email | belinda.catman@lfpl.org | Contact Phone      | 502-574-1845   |

|                                       |              |                  |                |       |
|---------------------------------------|--------------|------------------|----------------|-------|
| Contract Type: check one              | <b>New</b>   | <b>Amendment</b> |                |       |
|                                       |              | Additional Funds | Time Extension | Scope |
| Professional Service                  |              |                  |                |       |
| Sole Source (goods/services)          | ✓            |                  |                |       |
|                                       | <b>Start</b> | <b>End</b>       |                |       |
| Requested Contract Dates (MM/DD/YYYY) | 07/01/2018   | 06/30/2019       |                |       |

**VENDOR INFORMATION**

|   |                                   |                                |                         |          |                        |  |  |
|---|-----------------------------------|--------------------------------|-------------------------|----------|------------------------|--|--|
| Vendor Legal Name                                   | Cengage Learning, Inc.            |                                |                         |          |                        |  |  |
| DBA   | Gale                              |                                |                         |          |                        |  |  |
| Point of Contact                                    | Mir Loving                        |                                |                         | Email    | mir.loving@cengage.com |  |  |
| Street  | 20 Channel Center Street          |                                |                         |          |                        |  |  |
| Suite/Floor/Apt                                     |                                   | Phone                          | 800-877-4253 ext. 8464  |          |                        |  |  |
| City  | Boston                            | State                          | MA                      | Zip Code | 02110                  |  |  |
| Federal Tax ID#                                     |                                   | SSN# (if sole proprietor)      |                         |          |                        |  |  |
| Louisville Revenue Commission Account #             |                                   |                                |                         |          |                        |  |  |
| <u>Human Relations Commission Certified Vendors</u> | Certified Minority Owned Business | Certified Woman Owned business | Disabled Owned business |          |                        |  |  |
| Select if applicable                                |                                   |                                |                         |          |                        |  |  |

**FINANCIAL INFORMATION**

|                               |                  |   |      |                            |        |             |  |
|-------------------------------|------------------|---|------|----------------------------|--------|-------------|--|
| Not to Exceed Contract Amount | <b>\$200,000</b> | (including reimbursement expenses, if applicable) |      |                            |        |             |  |
| Fund Source: General Fund     | ✓                |   |      |                            |        |             |  |
| Federal Grant                 |                  | Federal Granting Agency                           |      |                            |        |             |  |
| Other                         |                  | Describe:   |      |                            |        |             |  |
| Account Code String #         | 1101             | 730   | 5922 | 591270                     | 521114 |             |  |
| Payment Rate                  |                  | per hour  |      | per day                    |        | per service |  |
|                               |                  | per month   |      | Other                      | Varies |             |  |
| Payment Frequency             | ✓                | Monthly   |      | Upon Completion / Delivery |        |             |  |
|                               |                  | Quarterly   | ✓    | Other                      | Annual |             |  |



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**CONTRACT SCOPE and PURPOSE** (Attach additional documentation if necessary)

**Amendments:** Describe the circumstances under which a time extension or scope change is needed.

**New:** Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.


Cengage provides three reference databases-Legal Forms which allows patrons access to legal forms that they can print out and utilize; Gale Biography which contains biographical articles from reference books and journals; and Literature Resource Center which contains literary criticism, writer biographies, and reference and journal articles on literary topics.

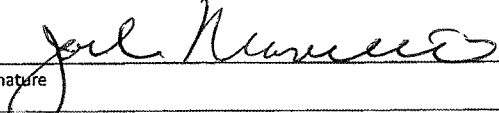
**JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE** (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

Cengage is the only provider for these products.

**AUTHORIZATIONS:** Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director \_\_\_\_\_ Date 4/5/18  
 Signature   
 Printed Name Jim Blanton

Purchasing Director \_\_\_\_\_ Date 4/13/18  
 Signature   
 Printed Name Joel Neaveill

## **AGREEMENT FOR SOLE SOURCE PURCHASE**

**THIS CONTRACT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **LOUISVILLE FREE PUBLIC LIBRARY**, herein referred to as “**METRO GOVERNMENT**”, and **CENGAGE LEARNING, INC.**, with offices located at 20 Channel Center Street, Boston, Massachusetts 02110, herein referred to as “**CONTRACTOR**”,

### **WITNESSETH:**

**WHEREAS**, the Metro Government wishes to purchase books, audio books, and access to databases and other library materials for use by Library patrons; and

**WHEREAS**, the Contractor has been determined by the Metro Government to be a sole source to provide same,

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

#### **I. SCOPE OF WORK**

**A.** Contractor shall, at the request of the Metro Government, provide goods and services under the terms of this Agreement.

**B.** Contractor shall supply, upon an order from the Metro Government:

**1.** Books, audio books, databases and other library materials as described by the Metro Government in its orders for same and as described on Attachment A attached hereto and fully incorporated herein. Attachment A is the Contractor's Subscription and Hosting Agreement. To the extent its provisions do not conflict with the provisions hereof, they shall apply to transactions hereunder.

#### **II. FEES AND COMPENSATION**

**A.** The Metro Government shall pay Contractor for services rendered and goods supplied as agreed to in writing between the parties and as described on Attachment A. Aside from Attachment A, the Library has attempted to define a pricing structure for this

Agreement, but has found it cannot do so since the market for the goods to be purchased fluctuates and cannot therefore be committed to writing for the term of this Agreement. The Library and Contractor shall therefore agree in writing to pricing and any other terms for each transaction they execute. Total compensation payable to Contractor under this Agreement shall not exceed **TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)**.

**B.** Payment shall be made pursuant to Contractor's detailed invoice, itemized by the specifications of each item purchased and any other terms related to the transaction.

**C.** The Metro Government shall not reimburse out of pocket expenses under this Agreement.

### **III. DURATION**

**A.** This Agreement shall begin July 1, 2018 and shall continue through and including June 30, 2019.

**B.** This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**C.** In the event of termination, payment for goods and services delivered up to and including date of termination shall be made by the Metro Government.

### **IV. RECORDS-AUDIT**

Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to

inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

**V. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

The Contractor shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

**VI. INSURANCE REQUIRMENTS**

A. Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation

written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to Metro Government and approved by the Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Metro Government. Metro Government may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro Government's option, actual copies of policies.

B. The following clause shall be added to the Contractor's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

C. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the contractors or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

COMMERCIAL GENERAL LIABILITY: via the Occurrence Form, primary and non-contributory, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

WORKERS' COMPENSATION (if applicable): insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and EMPLOYERS' LIABILITY - \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.

#### D. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro Government's Risk Management Division.

#### E. MISCELLANEOUS

1. The Contractor shall procure and maintain insurance policies and shall furnish Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).

2. Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government

Office of Management and Budget  
Louisville Fire Department  
611 West Jefferson Street, 3rd Floor  
Louisville, Kentucky 40202

3. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:

Louisville/Jefferson County Metro Government  
Office of Management and Budget  
Risk Management Division  
611 West Jefferson Street  
Louisville, Kentucky 40202

4. CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro Government's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro Government's Risk Management Division within two business days. If Contractor fails to notify Metro Government as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.

5. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that Metro Government does not in any way represent that the specified Limits of Liability or coverage



or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.

**VII. REPORTING OF INCOME**

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

**VIII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

**IX. AUTHORITY**

The Contractor, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

**X. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other

determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein;

or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

**XI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto. In the event of a conflict between the terms of this Agreement and the terms in any of the Attachments, this Agreement shall govern.

**XII. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**XIII. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

**XIV. COUNTERPARTS**

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

**XV. CALCULATION OF TIME** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Contractor is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

**XVI. CAPTIONS** The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

**XVII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS** The Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.


WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND  
LEGALITY CONTINGENT UPON  
METRO COUNCIL APPROVAL  
OF THE APPROPRIATION FOR  
THIS AGREEMENT:

  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

Date: 4/24/18

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

  
JOEL NEAVEILL, DIRECTOR, PURCHASING  
DEPARTMENT

Date: 5/2/18

LOUISVILLE FREE PUBLIC LIBRARY

  
JAMES BLANTON, DIRECTOR

Date: 4/30/18

CENGAGE LEARNING, INC.

By: 

Title: Brian McDonough - Sr VP Sales

Date: 4-25-2018

Taxpayer Identification No.  
(TIN): [REDACTED]

Louisville/Jefferson County  
Revenue Commission Account  
No.: [REDACTED]

ATTACHMENT A

**Thorndike Press**  
10 Water Street, Suite 310  
Waterville, ME 04901  
Toll Free (800) 223-1244 Toll Free Fax (800) 558-4676  
thorndike.gale.com



June 22, 2017

LOUISVILLE FREE PUBLIC LIBRARY

ADDRESS  
CITY, STATE ZIP-CODE

To Whom It May Concern:

This is in response to any questions or concerns regarding the purchase and/or subscription of Thorndike Press titles.

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Best regards,

**Sabine McAlpine**  
Strategic Account Manager

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