

RESOLUTION NO. 104, SERIES 2017

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED SOLE SOURCE CONTRACT – (RECORDED BOOKS, INC. - \$225,000.00).

SPONSORED BY: COUNCIL MEMBER WOOLRIDGE

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

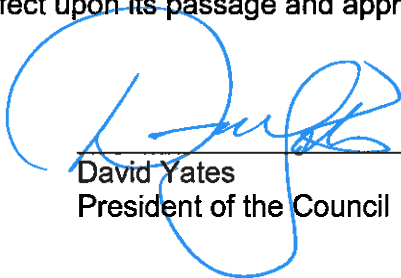
SECTION I: The following appropriation for the listed contract is hereby approved:


**LIBRARY**

\$225,000.00 for a noncompetitively negotiated new Sole Source Contract with Recorded Books, Inc., for books, audio books, databases and other library materials for use by Library patrons from July 1, 2017 through June 30, 2018.

SECTION II: This Resolution shall take effect upon its passage and approval.

  
\_\_\_\_\_  
H. Stephen Ott  
Metro Council Clerk

  
\_\_\_\_\_  
David Yates  
President of the Council

  
\_\_\_\_\_  
Greg Fischer  
Mayor

10/30/2017  
\_\_\_\_\_  
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell  
Jefferson County Attorney



BY: 



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

|               |                        |                    |                |
|---------------|------------------------|--------------------|----------------|
| Department    | Library                | Department Contact | Belinda Catman |
| Contact Email | belinda.catman@lpl.org | Contact Phone      | 502-674-1845   |

|                                       |   |                                    |                |       |
|---------------------------------------|---|------------------------------------|----------------|-------|
| Contract Type: check one              | <input checked="" type="checkbox"/> New | <input type="checkbox"/> Amendment |                |       |
|                                       |   | Additional Funds                   | Time Extension | Scope |
| Professional Service                  |   |                                    |                |       |
| Sole Source (goods/services)          | <input checked="" type="checkbox"/>     |                                    |                |       |
|                                       | Start                                   | End                                |                |       |
| Requested Contract Dates (MM/DD/YYYY) | 07/01/2017                              | 06/30/2018                         |                |       |

**VENDOR INFORMATION**

|  |                                   |                                |                            |                |
|--|-----------------------------------|--------------------------------|----------------------------|----------------|
| Vendor Legal Name                            | Recorded Books, Inc.              |                                |                            |                |
| DBA  |                                   |                                |                            |                |
| Point of Contact                             | Mike Poynter                      | Email                          | mpoynter@recordedbooks.com |                |
| Street                                       | 270 Skipjack Road                 |                                |                            |                |
| Suite/Floor/Apt                              |                                   | Phone                          | 1-800-638-1304             |                |
| City   | Prince Frederick                  | State                          | MD                         | Zip Code 20678 |
| Federal Tax ID#                              |                                   | SSN# (if sole proprietor)      |                            |                |
| Louisville Revenue Commission Account #      |                                   |                                |                            |                |
| Human Relations Commission Certified Vendors | Certified Minority Owned Business | Certified Woman Owned business | Disabled Owned business    |                |
| Select if applicable                         |                                   |                                |                            |                |

**FINANCIAL INFORMATION**

|                               |                                     |   |                                     |                            |             |
|-------------------------------|-------------------------------------|---|-------------------------------------|----------------------------|-------------|
| Not to Exceed Contract Amount | \$225,000                           | (including reimbursement expenses, if applicable) |                                     |                            |             |
| Fund Source: General Fund     | <input checked="" type="checkbox"/> |   |                                     |                            |             |
| 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             | <input checked="" type="checkbox"/> | Monthly   |                                     | Upon Completion / Delivery |             |
|                               |                                     | Quarterly   | <input checked="" type="checkbox"/> | Other                      | Annual      |



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

**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.

Recorded Books provides the platform that supports the library's eAudio and eMagazine materials. They also provide assorted Audiobooks for purchase.

**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.

Recorded Books is the only supplier for this platform.

**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 \_\_\_\_\_  
Signature 

Printed Name JAMES BLANTON

Purchasing Director \_\_\_\_\_ Date 6/21/17

Signature   
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 RECORDED BOOKS, INC., with offices located at 270 Skipjack Road, Prince Frederick, Maryland 20678, herein referred to as "CONTRACTOR",

### WITNESSETH:

WHEREAS, the Metro Government wishes to purchase books, audio books, 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.

#### 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 TWENTY-FIVE THOUSAND DOLLARS (\$225,000.00)**.

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, 2017 and shall continue through and including June 30, 2018.

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):

1. **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

2. **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 heroon.

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: 7/12/17

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

  
JOEL NEAVEILL, DIRECTOR, PURCHASING  
DEPARTMENT

Date: 7/14/17

LOUISVILLE FREE PUBLIC LIBRARY

  
JAMES BLANTON, DIRECTOR

Date: 10/2/17

RECORDED BOOKS, INC.

By:   
James Smith

Title: Librarian, Books & Materials

Date: August 15, 2017

ATTACHMENT A

# Recorded Books

June 25, 2017

Recorded Books offers audiobooks on CD and eAudio from a wide range of publishers in addition to our own proprietary catalog of titles. CD list prices run anywhere from \$5.99 to \$345.00 depending upon length and publisher. Pricing for the eAudio format is between \$2.99 to \$300.00 depending upon length and publisher.

Recorded Books extends the following discounts on audiobooks to Louisville Free Public Library:

CDs produced by Recorded Books – 70% - 50% off and free shipping

eAudio produced by Recorded Books – 10% - 50% off

eAudio produced by other publishers - 5% - 10%

The *Zola for Libraries* platform fee is \$19,000 for one year of service. Magazine prices range from \$3.50 to \$899.00 depending on the number of issues in the subscription.

Carla C. Evans  
*Customer Service and Support Manager*  
Recorded Books, Inc.

Recorded Books • 270 Skipjack Road • Pines Frederick, MD 20678  
1-877-732-2898 • [www.recordedbooks.com](http://www.recordedbooks.com)



6/12/2017

ST Subscription Form

Same as above    Add new contact

Bill To Address:

Street Address \*

City \*

State/Province \*

Zip Code \*

Check if Ship To Address is different than Bill To Address:

**OneClickdigital Subscriptions**

OneClickdigital Adult Subscription

OneClickdigital RE Top 250

OneClickdigital Dr. Who Subscription/Audio Classics

OneClickdigital Canadian Subscription

OneClickdigital eBook Classics

K-8

OneClickdigital Children/YA Subscription

OneClickdigital Academic Subscription

OneClickdigital Audiobooks Subscription

OneClickdigital Platform Only (Includes eAudiobook)

K-12

9-12

OneClickdigital Adult Subscription Price \*

\$22,000.00

OneClickdigital CH/YA Subscription Price \*

\$4,200.00

**Digital Services**

PRDigital Magazines - Access Only

InstantFix

Transparent Language

Universal Class

Atomic Training

Low Depot

Zinio/OneClickdigital Bundle

ePrep - only through 5/30/17

KidSpeak

ComicsPlus

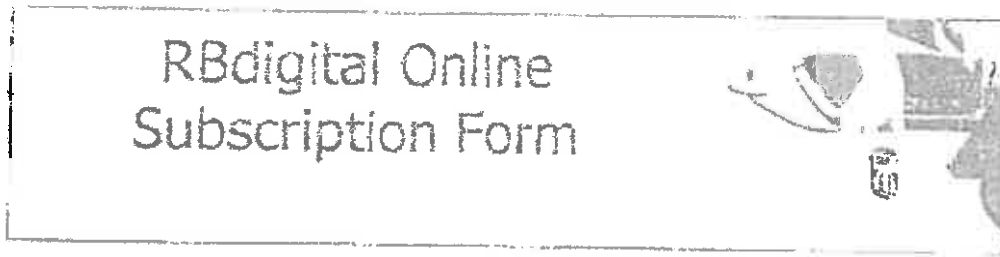
ArticleWorks

OnePlay

Zinio Value Collection - (US Collection)

Zinio Value Collection - (Canadian Collection)

Zinio for Libraries Article Search Add-On



Recorded  Books



Library/School Name \*

Terre Haute Free Public Library

State/Province \*

Kentucky

Total Annual Circulation/FTE \*

3,630,000

Category \*

5

# of Libraries served \*

17

Recorded Books Sales Representative \*

Mike Poynter

Budget Year \*

2017

ILS - Cataloging System \*

Libraries Unlimited

Primary Contact First Name \*

Primary Contact Last Name \*

Email Address \*

Phone Number

Marketing Contact \*

Library Facebook/Twitter URL:



Zip Code \*

Check if Ship To Address is different than Bill To Address

### New Subscriptions

#### OneClickdigital Subscriptions

- OneClickdigital Adult Subscription
- OneClickdigital PB Prep 250
- OneClickdigital Or. Wldg Subscription/Audio Classics
- OneClickdigital Canadian Subscription
- OneClickdigital eBook Classics
- K-8
- OneClickdigital Children/YA Subscription
- OneClickdigital Academic Subscription
- OneClickdigital Audiobooks Subscription
- OneClickdigital PB/Format Only (includes eBook Classics)
- K-12
- 9-12

#### RBdigital Services

- RBdigital Magazines - Access Only
- Universal Class
- Zinio OneClickdigital Bundle
- ComixPlus
- Zinio Value Collection - (JS Collection)
- Qello Journals
- Merge Promo - eBooks - Ed Classics
- InstantMix
- Atomic Training
- ePrep - only through 6/30/17
- Art4Works
- Zinio Value Collection - (Canadian Collection)
- Merge Promo - Magazines - 50
- Transparent Language
- Law Depot
- KidSpeak
- OnePlay
- Zinio for Libraries Article Search Add-On
- Merge Promo - Audiobooks - 250

Zinio Access Fee Price \*

\$19,000.00





