

STATE OF TEXAS §
§
COUNTY OF FORT BEND §

AMENDMENT TO HOOPLA SERVICE AGREEMENT

THIS AMENDMENT (“Amendment”) is entered into by and between Fort Bend County, (“County”), a body corporate and politic under the laws of the State of Texas, and Midwest Tape, LLC (“Midwest Tape”), a company authorized to conduct business in the State of Texas (collectively referred to as the “parties”).

WITNESSETH:

WHEREAS, the parties previously entered into the Addendum to Hoopla Service Agreement, on or about November 18, 2014, and as subsequently renewed annually (collectively the "Agreement") and incorporated herein for all purposes as if set forth verbatim herein; and

WHEREAS, County desires that Midwest Tape provide the hoopla digital platform and other associated library products as will be more specifically described in this Agreement (collectively the "Services"); and

WHEREAS, Midwest Tape 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, Midwest Tape is the sole source provider of the Services as indicated by the letter attached hereto 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, County and Midwest Tape desire to amend said Agreement as set forth below:

I. Amendments

1. **Scope of Services.** Midwest Tape shall continue to provide Services under the Agreement. The parties acknowledge and agree that Services were and will be supported by good and valuable consideration during the Term of this Agreement, the sufficiency of which is acknowledged by the parties.
2. **Term.** This Agreement shall renew and this Amendment is effective as of October 1, 2023, and shall expire no later than September 30, 2024, unless terminated sooner

pursuant to this Agreement. Neither the Agreement nor this Amendment shall automatically renew, but may renew upon written agreement of the parties.

3. **Limit of Appropriation.** The Maximum Compensation for the performance of services within the Scope of Services is Two Hundred Seventy-Six Thousand Five Hundred and 0/100 dollars (\$276,500.00). In no case shall the amount paid by County under this Amendment exceed this Maximum Compensation without an approved change order. Midwest Tape clearly understands and agrees, such understanding and agreement being of the absolute essence of this Amendment, that County shall have available the total maximum sum of Two Hundred Seventy-Six Thousand Five Hundred and 0/100 dollars (\$276,500.00), specifically allocated to fully discharge any and all liabilities County may incur. Midwest Tape does further understand and agree, said understanding and agreement also being of the absolute essence of this Amendment, that the total maximum compensation that Midwest Tape may become entitled to and the total maximum sum that County may become liable to pay to Midwest Tape shall not under any conditions, circumstances, or interpretations thereof exceed Two Hundred Seventy-Six Thousand Five Hundred and 0/100 dollars (\$276,500.00).
4. **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, Midwest Tape hereby verifies that Midwest Tape 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 Sections 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, Midwest Tape 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, Midwest Tape 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, Midwest Tape 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.
5. **Public Information Act and Open Meetings Act.** Midwest Tape 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 or this Amendment to the contrary, County will make any information related to the Agreement and this Amendment, 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 Midwest Tape 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 and this Amendment are not proprietary or confidential information. Midwest Tape 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 or this Amendment to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement and this Amendment.

6. **Modifications.** Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
7. **Conflict.** If there is a conflict among documents, the most recently executed document will prevail with regard to the conflict.
8. **Understanding, Fair Construction.** By execution of this Amendment, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Amendment. This Amendment, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
9. **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)

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IN WITNESS WHEREOF, this Amendment 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 Amendment and the attachments and exhibit(s) hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

MIDWEST TAPE, LLC

KP George, County Judge

Authorized Agent – Signature

Date

Sue Bascuk

Authorized Agent- Printed Name

ATTEST:

Vice President

Title

Laura Richard, County Clerk

10-30-2023

Date

REVIEWED:

Fort Bend County Libraries

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this Agreement.

Robert Ed Sturdivant, County Auditor

EXHIBIT



October 1, 2023

Re: Sole Source Statement

Midwest Tape (Midwest) is a full-service media distributor offering a wide variety of workflow solutions. Our unique product offerings and performance capabilities make us the sole source provider for public libraries. Midwest provides completely customized solutions for the fulfillment and support of physical media (DVDs, Music CDs and Audiobooks) to Public Libraries throughout North America. From custom media selection processes all the way through to library and patron support, Midwest's proprietary formula provides sole sourced solutions for each individual library's needs.

We are pleased to announce two new sole source solutions within our DVD offerings; Great Courses and BingeBoxes. Our exclusive offers now include bundling of Great Course content into our new shelf-ready package, and BingeBox which includes 4-6 hand selected titles in each case, over 100 different themes that update quarterly. As with all our packaged media, our exclusive VIP processing solutions are available for both Great Courses and BingeBox offerings.

Workflow Solutions and Physical Media

Our Company provides libraries with unique performance capabilities that you will not find elsewhere. Like our Customized Standing Order service which creates media recommendations based upon criteria defined by your library. This process is suited perfectly for opening day collection requirements too. We provide a dedicated coordinator to assist with creating a completely turnkey process, which includes everything from customized selection lists to the delivery of shelf-ready products delivered and shelved at the designated destination.

Midwest Tape's collection development services are free of charge, programs above are modifiable; and selections include free vendor records; all offered with no minimums, no contracts, and no obligation to purchase.

Our Digital Processing Services provide shelf-ready products customized to each individual library. A dedicated coordinator and a team of processors are assigned to assist you throughout the process and after. Midwest's exclusive Variable Integrated Processing (VIP) uses imaging technology to create customized packaging and data services. In addition, for audiobooks, our digital processing service includes our patented SoundSafe™ case, which has been engineered specifically for libraries. These services are available in all formats.

Customer Service is our Brand

At Midwest, we believe libraries are an invaluable part of our society and it is our mission to help them deliver the best patron experience.

For more information, please contact me at the toll-free number above, or by email at [sbascuk@midwesttapes.com](mailto:sbascul@midwesttapes.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Sue Bascuk', is written over a horizontal line.

Sue Bascuk, Vice President

1417 Timberwolf Drive

Holland, OH 43528

800.875.2785

midwesttape.com hoopladigital.com

MIDWEST TAPE

Here for Libraries.

PO Box 820 Holland, OH 43528
1-800-875-2785

October 1, 2023

RE: Sole Source Media on Demand service

To whom it may concern:

This letter confirms that hoopla—the all-in-one, digital library service app—its delivery model and offerings, is a sole source product. hoopla (alternatively ‘hoopla’ or ‘the service’) is the only Library Media on Demand (LMOD) software application offered exclusively to and by libraries and is manufactured, sold, and distributed wholly by Midwest Tape, LLC.

The service is an MWT proprietary design providing libraries the only true patron-driven acquisition model delivering all digital media—specifically Audiobooks, eBooks, Comics, Movies, TV, Music, Magazines, and no-fee subscription content viewing—under one log-in, and to all patrons simultaneously, combined with the traditional licensing model known as One Copy One User. As a result, no other available service offers the same purpose or functionality.

Additionally, hoopla is the sole LMOD content provider for Warner and Universal Music, as well as CuriosityStream; in addition to select titles from MGM, Nat Geo, Miramax, RLJ, Lionsgate, Viacom, Relativity Media, Pottermore, and other studios and publishers.

MWT wholly maintains, hosts, and supports hoopla and retains all intellectual property rights in and to hoopla including the Digital Media Platform, websites and applications, and all modifications, updates, or improvements made thereto.

MWT warrants that no other division of MWT or other provider offers a product or service that achieves the same purpose or functionality.

For additional information, please contact me at 800-875-2785 or sbascuk@midwesttapes.com.

Sincerely,



Sue Bascuk
Vice President