

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; 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 letters 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, 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 as described in Midwest Tape's Letter, dated October 1, 2022, attached as Exhibit "A" and incorporated fully by reference. 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, 2022, and shall expire no later than September 30, 2023, 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 as described in Exhibit A is \$291,500.00. 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 \$291,500.00, 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 \$291,500.00.
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)

(Remainder of Page Intentionally Left Blank)

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 exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

*KP George*

County Judge KP George

KP George, County Judge

MIDWEST TAPE, LLC

*Susan Basak*

Authorized Agent- Signature

January 3, 2023

Date



ATTEST:

*Laura Richard*

Laura Richard, County Clerk

*Susan Basak*

Authorized Agent- Printed Name

*VP*

Title

*12/15/22*

Date

REVIEWED:

*Anna Y. Russell*

Fort Bend County Libraries

#### AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 291,500.00 to accomplish and pay the obligation of Fort Bend County under this Agreement.

*Robert E. Sturdivant*

Robert Ed Sturdivant, County Auditor

Exhibit A: Midwest Tape's Letter, dated October 1, 2022; and

Exhibit B: Midwest Tape's Sole Source Letters.

# **EXHIBIT A**

Reg # 217359



Midwest Tape, LLC  
1417 Timberwolf; Holland, Ohio 43528

October 1, 2022

Sara Wheeler  
Fort Bend County Libraries  
1001 Golfview Drive  
Richmond, TX 77469

Dear Sara,

We thank you for your continued confidence in our hoopla digital platform. Please accept this letter as confirmation that Fort Bend County Libraries is renewing hoopla for one year and we are honoring the same terms and conditions of the original agreement. We agree to allow your library to begin paying invoices from the monthly statements.

Your business and input into our digital platform has been greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Sue Bascuk".

Sue Bascuk

VP of Business Development  
[SBascuk@midwesttapes.com](mailto:SBascuk@midwesttapes.com)

## **EXHIBIT B**



1417 Timberwolf Drive  
Holland, Ohio 43528  
800-875-2785  
[www.midwesttape.com](http://www.midwesttape.com)

Req # 217354

October 1, 2022

**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 a 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 a new sole sourced solution within our DVD offerings specifically for Great Courses. Our exclusive offer now allows for bundling of this content into our new shelf-ready package. As with all our packaged media, our exclusive VIP processing solutions are available for the Great Courses offering.

***Workflow Solutions and Physical Media***

Our Company provides library's 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 product 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 product 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 across 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,

*Sue Bascul*

Vice President, Finance & Development



# MIDWEST TAPE

LIBRARIANS CHOICE

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

October 1, 2022

Reg# 217354

RE: Sole Sourcing for Media on Demand service

To whom it may concern:

This letter has been written to confirm that Midwest Tape's co-branded, all in one app, digital library service "hoopla" ("the Service"), its delivery model and offerings, is a sole source product. The service is the only exclusive Library Media on Demand (LMOD) software application offered exclusively to and by libraries and is manufactured, sold and distributed exclusively by Midwest Tape, LLC.

"hoopla" digital service is a Midwest Tape proprietary design which provides libraries the only true patron-driven acquisition model in which all digital media content (Audiobooks, eBooks, Comics, Movies, TV, and Music) are available under one log-in and to every patron simultaneously.

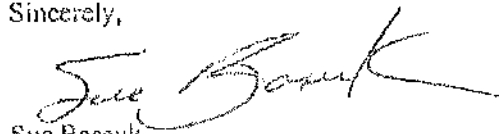
"hoopla" is currently the sole content provider for LMOD with MGM, NBC Universal, Nat Geo, Bold and Beautiful, Miramax, RLJ, Warner Music, Universal Music, DC Comics, Lionsgate, Viacom, Relativity Media and to name a few.

Midwest Tape maintains, hosts, and supports the "hoopla" service for libraries. Midwest owns and retains all intellectual property rights in and to "the Service"; the Digital Media Platform, Websites and Applications and all modifications, updates, or improvements made thereto.

Midwest Tape warrants that no other provider offers the same product that achieves the same purpose or function as hoopla does.

If you desire additional information, please contact me at the toll-free number above, or by email [sbascuk@midwesttapes.com](mailto:sbascuk@midwesttapes.com).

Sincerely,



Sue Bascuk  
Vice President

# CERTIFICATE OF INTERESTED PARTIES

**FORM 1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Midwest Tape, LLC  
Holland, OH United States

**Certificate Number:**  
2022-965179

**Date Filed:**  
12/16/2022

**Date Acknowledged:**  
01/03/2023

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

11002  
MIDWEST TAPE 23-Lib-100288

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	JJ Eldred, LLC	Holland, OH United States	X	
	Intrinsic Partners, LP	Holland, OH United States	X	

**5 Check only if there is NO Interested Party.**

☐**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)