



Amendment No. 7
of
Contract No. MA 5600 NS160000023
for
Hoopla Digital Platform Support
between
Midwest Tape, LLC
(Contractor)
and the
City of Austin, Texas

1.0 The above referenced contract is amended as follows:

1.1 Modifying section 3.1 Contract amount by \$60,999 for a new amount not to exceed \$1,318,999.

3.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Initial Term: 02/17/2016 – 02/18/2017	\$150,000.00	\$150,000.00
Amendment No. 1: Administrative Increase	\$58,000.00	\$208,000.00
Amendment No. 2: Option 1 – Extension 02/17/2017 – 02/18/2018	\$150,000.00	\$358,000.00
Amendment No. 3: Administrative Increase Adding \$150,000.00 to original term and \$150,000.00 to Options 1-3	\$300,000.00	\$658,000.00
Amendment No. 4: Invoice Address Change	\$0.00	\$658,000.00
Amendment No. 5: Option 2 – Extension 02/17/2018 – 02/18/2019	\$300,000.00	\$958,000.00
Amendment No. 6: Option 3 – Extension 02/17/2019 – 02/18/2020	\$300,000.00	\$1,258,000.00
Amendment No. 7 – Administrative Increase	\$60,999.00	\$1,318,999.00

4.0 MBE/WBE goals were not established for this contract.

5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated


by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Authorized Representatives:

Midwest Tape, LLC


Signature

Jeff Jankowski

Printed Name of Authorized Person

Vice President

Title

Date: 5-9-19

Midwest Tape, LLC
1417 Timberwolf Drive
Holland, OH 43528

City of Austin Purchasing Office


Signature

Daniel Dellemonache

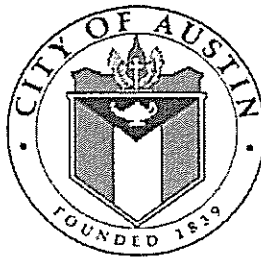
Printed Name of Authorized Person

Procurement Specialist III

Title

Date: 5/13/19

City of Austin
124 W. 8th St. Ste. 310
Austin, TX 78701



Amendment No. 6
to
Contract No. 5600 NS160000023
for
Hoopla Digital Platform Support
between
Midwest Tape, LLC.
and the
City of Austin

1.0 The City hereby exercises this extension option for the subject contract. This extension option will be February 17, 2019 through February 18, 2020. No options remain.

2.0 The total contract amount is increased by \$300,000.00 by this extension period. The total contract authorization is recapped below.

Action	Action Amount	Total Contract Amount
Initial Term: 02/17/2016 – 02/18/2017		
	\$150,000.00	\$150,000.00
Amendment No. 1: Administrative Increase	\$58,000.00	\$208,000.00
Amendment No. 2, Option 1 - Extension 02/17/2017 – 02/18/2018	\$150,000.00	\$358,000.00
Amendment No. 3: Administrative Increase Adding \$150,000.00 to original term and \$150,000.00 to Option 1	\$300,000.00	\$658,000.00
Amendment No. 4: Invoice Address Change	\$0.00	\$658,000.00
Amendment No. 5, Option 2 - Extension 02/17/2018 – 02/18/2019	\$300,000.00	\$958,000.00
Amendment No. 6, Option 3 - Extension 02/17/2019 – 02/18/2020	\$300,000.00	\$1,258,000.00

3.0 MBE/WBE goals do not apply to this contract.

4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: *Susan Bascul* 1/7/19

Printed Name: Susan Bascul
Authorized Representative
Midwest Tape, LLC
6950 Hall Street
Holland, OH 43528

Sign/Date: *Bartley* 1/7/19

Printed Name: Bartley Tyler

Sign/Date: *J. Howard*

Printed Name: JAMES T. HOWARD
Authorized Representative
City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767



Amendment No. 5
to
Contract No. 5600 NS160000023
for
Hoopla Digital Platform Support
between
Midwest Tape, LLC.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be February 17, 2018 through February 18, 2019. One option will remain.
- 2.0 The total contract amount is increased by \$300,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/17/2016 – 02/18/2017		
	\$150,000.00	\$150,000.00
Amendment No. 1: Administrative Increase	\$58,000.00	\$208,000.00
Amendment No. 2, Option 1 - Extension 02/17/2017 – 02/18/2018	\$150,000.00	\$358,000.00
Amendment No. 3: Administrative Increase Adding \$150,000.00 to original term and \$150,000.00 to Option 1	\$300,000.00	\$658,000.00
Amendment No. 4: Invoice Address Change	\$0.00	\$658,000.00
Amendment No. 5, Option 2 - Extension 02/17/2018 – 02/18/2019	\$300,000.00	\$958,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Printed Name: Jeff Jankowski, Vice President
Authorized Representative
Midwest Tape, LLC
6950 Hall Street
Holland, OH 43528

Sign/Date:

Printed Name: JANE T. HOWARD
Authorized Representative
City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767



Amendment No. 4
of
Contract No. NS160000023
for
Hoopla Digital Platform Support
between
Midwest Tape, LLC
and the
City of Austin

- 1.0 The above referenced contract is hereby amended, effective November 20, 2017, to modify the invoice address to the following:

	City of Austin
Department	Austin Public Library
Email	Library.ACCSAccountsPayable@austintexas.gov

Or

	City of Austin
Department	Austin Public Library
Address	PO Box 2287
City, State, Zip Code	Austin, TX 78768

- 2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 02/17/2016 – 02/18/2017	\$150,000.00	\$150,000.00
Amendment No. 1: Administrative Increase	\$58,000.00	\$208,000.00
Amendment No. 2: Option 1 02/17/2017 – 02/18/2018	\$150,000.00	\$358,000.00
Amendment No. 3: Administrative Increase Adding \$150,000 to original term and \$150,000 to Option 1.	\$300,000.00	\$658,000.00
Amendment No. 4: Invoice Address Change	\$0.00	\$658,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: Susan Basco

Date: 11/20/17

Printed Name: SUSAN BASCO
Authorized Representative

Midwest Tape, LLC
6950 Hall Street
Holland, OH 43528

Signature: Elisa Folco

Date: 11/21/2017

Printed Name: Elisa Folco, Procurement Specialist IV
Authorized Representative

City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767



Amendment No. 3
of
Contract No. NS160000023
for
Hoopla Digital Platform Support
between
Midwest Tape, LLC
and the
City of Austin

1.0 The City hereby amends this Contract by adding \$150,000 to the original contract term, and an increase of \$150,000 to each of the three 12-month options, for a revised contract amount not to exceed \$1,258,000. Austin City Council provided authority and approval on February 16, 2017, RCA Agenda Item No. 25.

1.1 This Amendment is adding \$150,000 to the original contract term and \$150,000 to Option 1. There are two remaining 12-month options that will need to be increased by \$150,000 each.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 02/17/2016 – 02/18/2017	\$150,000.00	\$150,000.00
Amendment No. 1: Administrative Increase	\$58,000.00	\$208,000.00
Amendment No. 2: Option 1 02/17/2017 – 02/18/2018	\$150,000.00	\$358,000.00
Amendment No. 3: Administrative Increase Adding \$150,000 to original term and \$150,000 to Option 1.	\$300,000	\$658,000.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: Susan Basuk

Date: 2/26/17

Printed Name: SUSAN BASUK
Authorized Representative

Midwest Tape, LLC
6950 Hall Street
Holland, OH 43528

Signature: Elisa Folco

Date: 3/2/2017

Printed Name: Elisa Folco, Corp. Contract Administrator
Authorized Representative

City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767

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

Certificate Number:
2017-168290

Date Filed:
02/17/2017

Date Acknowledged:

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

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

Austin Public Library

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.

NS160000023
hoopladigital/Hoopla Digital Platform & Support

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Intrinsic	Maumee, OH United States	X	
	JJ Eldred Family Limited Partnership	Swanton, OH United States	X	


5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



MARY J JACOBS
Notary Public
In and for the State of Ohio
My Commission Expires
July 2, 2019


Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Doug Gorsuch this the 2ND day of March, 20 17, to certify which, witness my hand and seal of office.


Signature of officer administering oath

MARY J JACOBS
Printed name of officer administering oath

Exec. Assistant
Title of officer administering oath



Amendment No. 2
to
Contract No. NS160000023
for
Hoopla Digital Platform Support
between
Midwest Tape, LLC (Contractor)
and the
City of Austin

- 1.0 The City hereby exercises the extension options for the above-referenced contract. Effective February 17, 2017 the term for the extension option will be February 17, 2017 through February 16, 2018 and there are two (2) options remaining.
- 2.0 The total contract amount is increased by \$150,000.00 for the current extension option period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/19/2016 – 02/18/2017	\$150,000.00	\$150,000.00
Amendment No. 1: Administrative Increase	\$58,000.00	\$208,000.00
Amendment No. 2: Option 1 02/17/2017 – 02/16/2018	\$150,000.00	\$358,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Sue Bascuk / January 24, 2017

Printed Name: Sue Bascuk, Vice President of Business Development
Authorized Representative

6950 Hall Street,
Holland,
OH 43528

Sign/Date: Elisa Folco 1/24/17

Printed Name: Elisa Folco
Authorized Representative

City of Austin
Purchasing Office



Amendment No. 1
to
MA5600 NS160000023
for
Hoopla Digital Platform Support
between
Midwest Tape, LLC (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise the **Compensation** Section to **increase the total not to exceed to** \$208,000.00 for the initial term. This is an increase of \$58,000.00; and

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 2/19/16 – 2/18/17	\$150,000.00	\$150,000.00
Amendment No. 1: Administrative increase	\$58,000.00	\$208,000.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Signature: 

City of Austin Purchasing Office

Printed Name: Gil Zilber

Date: 9/6/16

City of Austin
124 W. 8th St., Ste. 310
Austin, TX 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Midwest Tape, LLC
For
Hoopla Digital Platform and Support**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Midwest Tape, LLC ("Contractor"), having offices at 6950 Hall Street, Holland, OH 43528.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Eric Timm, Phone: (419) 868-9370, Email Address: ETimm@midwesttapes.com. The City's Contract Manager for the engagement shall be Sandra Cannon, Phone: (512) 974-7588, Email Address: Sandra.Cannon@austintexas.com. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$150,000.00 for the initial term, \$150,000.00 for the first extension, \$150,000.00 for the second extension, and \$150,000.00 for the third extension, for a total estimated contract amount not to exceed \$600,000.00 comprising the software maintenance and support fees.

3.2 **Economic Price Adjustment.**

3.2.1 **Price Adjustments.** Prices shown in this Contract shall remain firm for the first 12-month period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed ten percent (10%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.2.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period:** Month and year of the original contracted price (the solicitation close date).

3.2.4.1.2 **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %:** The percent of the Base Price subject to adjustment based on the index change.

3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2. If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100	
Database Name: Producer Price Index Data	
Series ID: WPU34	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area:	
Description of Series ID: Software Publishing	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: ALL	

3.2.5 **Calculation.** Price adjustment will be calculated as follows:

3.2.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Price
Equals the Adjusted Price

- 3.2.6 If the requested adjustment is not supported by the referenced index, the City, as its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 Invoices.

3.3.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.3.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 Payment.

3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.4.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- 3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;
- 3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- 3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- 3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- 3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.5 **Retainage.** The City reserves the right to withhold a 10 percent (%) retainage until completion of all work required by the Contract. The Contractor's invoice shall indicate the amount due, less the retainage. Upon final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.

3.6 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.7 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.7.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.7.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.8 **Final Payment and Close-Out.**

3.8.1 The making and acceptance of final payment will constitute:

3.8.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.8.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to 3 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause..** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 General Requirements.

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.2 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.3 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.5.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With

respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.5.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.6 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.7 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the

amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 Compliance with Health, Safety, and Environmental Regulations. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 Significant Event. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 Right To Audit.

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity.

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF

THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Gil Zilkha, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Midwest Tape, LLC

ATTN: Contract Manager

6950 Hall Street

Holland, OH 43528

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable

treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 Waiver. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 Modifications. The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to

act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable

the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.29 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.29.1 any exceptions to the Offer accepted in writing by the City;

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

Midwest Tape, LLC

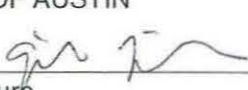
By: 
Signature

Name: Susan M. Bascuk
Printed Name

Title: V.P. Business Development

Date: _____

CITY OF AUSTIN

By: 
Signature

Name: Gil Zilkha
Printed Name

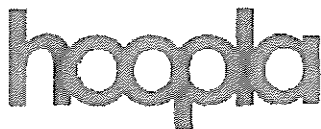
Title: Contract Administrator

Date: 2/17/16

List of Exhibits

Exhibit A	Offer and Subscription Agreement
Exhibit B	Non-Suspension or Debarment Certification
Exhibit C	Non Discrimination Certification, Section 0800
Exhibit D	Form 1295 "Certificate of Interested Parties" Instructions

EXHIBIT A
Offer and Subscription Agreement



Midwest Tape, LLC
6950 Hall Street; Holland, Ohio 43528

October 20, 2015

Sandra Cannon
Austin Public Library
800 Guadalupe St.
Austin, TX 78701

RE: Amendment to hoopla Service Agreement

Dear Ms. Cannon,

We thank you for your continued confidence in our hoopla digital platform and the service to your patrons has been successful.

Please accept this letter as confirmation that Austin Public Library is requesting to amend the original term of the hoopla Service Agreement for a twelve (12) month term with three (3), one (1) year annual renewals. An amount of \$120,000.00 is acceptable as an annual advance for use of the service by your patrons. Total contract not to exceed the amount of \$537,500.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sue Bascuk". The signature is fluid and cursive, with a large, stylized "S" and "B".

Sue Bascuk

VP of Business Development
SBascuk@midwesttapes.com



Hoopla™ Service Agreement

This Hoopla™ Service Agreement is made as of this 16th day of July, 2015 ("Effective Date") by and between City of Austin ("Library"), and Midwest Tape, LLC ("Midwest Tape") (Library and Midwest Tape are collectively, the "Parties"). In consideration of the promises and mutual covenants contained in this Service Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Midwest Tape, LLC and its affiliates (Hoopla) provides digital content, software applications, technology services and hosted websites to third parties. By enrolling in our Service Agreement, libraries will obtain access to our Digital Media Platform, Hoopla™. Hoopla™ enables libraries to offer their patrons the ability to access video, music and audiobook content digitally from either their mobile devices such as smartphones and tablets and/or via any browser. Other types of content may be added at any time. Libraries will be notified of all new content types. Library patrons will have access to all content made available by their library at all times and will be able to borrow content based on settings established by the library system of which they are a member.

I. **DEFINITIONS.** The following definitions apply wherever those terms appear in this Agreement:

"Digital Content Titles" means audiovisual works that Midwest Tape provides within the Digital Media Platform, to Library under this Service Agreement

"Digital Media Application (App)" means a computer program maintained and owned by Midwest Tape used to provide Patrons access to browse, borrow, and/or return Digital Content Titles from, and/or access, the Digital Media Platform through mobile devices and/or web services.

"Digital Media Platform" (Hoopla™) means a computer program maintained and owned by Midwest Tape, which in this Agreement includes the Digital Media Application, the Hoopla™ Library Website, the Hoopla™ Patron Website, and the Digital Content Titles, all of which are known as the "the Service" which is used to provide (i) the Digital Content Titles to Library and their Patrons, respectively, and (ii) various applications for Library to use to assemble and manage its collection of Digital Content Titles, and to facilitate, manage, and track its Patrons' use in the Digital Media Application as defined above.

"Distribution Partners" means any third party that provides services for Midwest Tape or enter into agreements with Midwest Tape, in connection with Hoopla™.

"Hoopla™ Library Website" means a Midwest Tape hosted website, within Hoopla™, to be used by Library to manage content available to Patrons in the Digital Media Platform, and administer Library policies with regards to the "the Service".

"Hoopla™ Patron Website" means a Midwest Tape hosted website, within Hoopla™, to be used by Patrons to browse and/or borrow Digital Content Titles from "the Service".

"Intellectual Property Rights" means all rights in and to patents, trademarks, service marks, trade names, copyrights, trade secrets, technology, software, designs, algorithms, know-how, as well as moral rights and all other intellectual and proprietary rights of any type under the laws of any governmental authority.



"Invoice Period" means the period beginning on Saturday and ending on Friday, recorded in UTC time, where "circulations" (purchases by Library) have occurred.

"Library Website" means a website owned and maintained by Library.

"Marks" means any trademarks, service marks, trade names, logos, designs, icons, characters, cover art, styles, and trade dress associated with any Digital Content Titles, including without limitation all translations or transliterations of the foregoing in any language, or any colorable imitations or modified versions thereof.

"Metadata" means, with respect to each Digital Content Title (i) the title; (ii) producers and/or studios; (iii) the suggested retail price for a Digital Content Title as determined by the relevant Vendor; (iv) if commercially used, the digital object identifiers for each Digital Content Title; (v) geographical rights restrictions, if any; (vi) short descriptions; (vii) cover art and image, graphics, and other images from the Digital Content Titles; (viii) discount class of each Digital Content Title; and (ix) any such other information provided by Vendors or Midwest Tape.

"Vendor" means a supplier to Midwest Tape of (i) Digital Content Title(s) or (ii) any technology or service necessary for Midwest Tape to provide the Digital Content Title(s) to Library via hoopla™.

"Patron" means a person who is authorized by Library to access, use, and connect to hoopla™ to borrow Digital Content Titles.

"Promotional Postings" means, with respect to each Digital Content Title, the cover or associated imagery or artwork, the copyright notice, and the description of the Digital Content Title.

"Territory" means the world (subject to any limitations set forth in the Metadata with respect to particular Digital Content Titles).

Your enrollment in this Service Agreement, allows Midwest Tape to grant your Library the following non-exclusive and non-transferrable rights and by enrolling you acknowledge that you have the full right, power and authority to act on behalf of the library rights and obligations as outlined in this agreement.

II. LIBRARY RIGHTS & OBLIGATIONS

Rights. The right to market, display, and use hoopla™ as provided herein;

Library has the right to allow Patrons to access, view and borrow Digital Content Titles through the hoopla™ Patron Website and/or Digital Media Applications;

Library has the right to use the Metadata, Marks, and Promotional Postings to promote hoopla™, including but not limited to postings on social media websites such as Facebook and Twitter;

Library has the right to use hoopla™ Digital Content Titles, Metadata, Marks and Promotional Postings to develop Library-customized collections and communications for its Patrons.

if any modification made by Midwest Tape pursuant to its Rights and Obligations materially impairs the value of this Agreement to Library, Library may terminate this Agreement.



Limitations.

The Library has no rights or ownership to hoopla™, its Digital Content Titles, Digital Media Platform, hoopla™ Library Website, hoopla™ Patron Website, Digital Media Applications, Marks, Metadata, or Promotional Postings, artwork or other materials delivered by Midwest Tape to Library other than those rights expressly provided in this Agreement.

Library has no right to access, use or reproduce any hoopla™ source code, or to make, sell, or distribute variations or derivative works of the Digital Media Platform.

Library has no public performance rights in the Digital Content Titles. The Library may not offer any Digital Content Titles as a performance in order to entice Patrons, or the general public, to come to an event, sponsored by Library or otherwise, in order to view any Digital Content Title, except as provided by Midwest Tape and designated by Vendor as Demo Content.

Library agrees to the support of Intellectual property protection, (including by not limited to copyright and trade marks), which include (i) prohibiting Patrons from engaging in activities that infringe on these rights and (ii) the Library not facilitating activities.

General Obligation. Library must ensure that it utilizes hoopla™ in compliance with the terms of this Agreement and all Appendices.

Sponsorship Obligation. In order for both parties to successfully support the obligations of this Agreement, the Library shall (i) communicate to staff, patrons, and/or general public served, the availability of the Service (ii) provide suitable training opportunities to appropriate staff members (iii) manage all funds appropriated to service (iv) manage the overall service offered (setup configuration) and (v) provide Primary Support to Patrons. Midwest Tape will provide direct support to the Library which will enable the Library to independently and properly operate all of the systems and functions that are available to Library and/or Patrons through hoopla™ as well as assist with support documentation.

Network Connectivity. Library is responsible for providing a suitable network and Internet system for iLS Integration of hoopla™ into the Library Website or other systems.

Expenses and Maintenance.

Library is responsible for all of its own expenses and costs related to its performance under this Service Agreement. Midwest Tape has no obligation to reimburse Library for any expenses or costs incurred by Library related to this Agreement or to the performance of Library's obligations under this Agreement, including but not limited to any such expenses and costs incurred in the preparation, systems integration, or use of the Digital Media Platform, the hoopla™ Library Website, the Digital Media Applications, or the hoopla™ Patron Website.

Library will perform requested linkage between hoopla™ and the Library's Website and reasonable technical services to support and maintain hoopla™ during the term of this Agreement. Library will notify Midwest Tape 72 hours (3 business days), or as reasonably available, before any change in any RSS links, iLS configuration (which may affect hoopla™ including patron authentication), URL updates or changes and/or any other technology modifications that could impact hoopla™ ("the Service") from operating properly.



Management of the hoopla™ Library website.

Library agrees, it alone has sole responsibility for managing and utilizing the hoopla™ Library Website as designed, including but not limited to the following features: establishing, verifying and maintaining system configuration logic, and related financials, circulations, content management, and reporting.

Library Website. Library is solely responsible for all aspects of catalog integration, operation, training, support and/or maintenance necessary for the operation of the Library Website. This may include requiring the expense of obtaining a SIP2 or other similar protocol software license(s) from a third party vendor to support direct integration of hoopla™ with the Library's Integrated Library System (ILS) as well as the cost for customized MARC records it may obtain from a third party supplier such as OCLC. Library shall keep its hoopla™ Account information current with Midwest Tape and alert Midwest Tape of any changes in its operation of the Library Website, including but not limited to changes of personnel, which may impact the support, functionality and/or performance of hoopla™.

Primary Support to Patrons. Library is responsible for providing its Patrons with any and all support, technical aid, help and/or other assistance for Patron's use of hoopla™ (the "Primary Support").

Communication of hoopla™ Service. In addition to the Primary Support above, Library agrees to use innovative ideas and library proven successful methods to promote and communicate "the Service" to its Patrons and/or to the general public served. Library acknowledges and agrees that Midwest Tape, at its own expense, may publicize and communicate hoopla™ to the general public served using various legal means. Midwest Tape agrees to make best faith efforts to collaborate and support the Library's in its communication efforts. Library acknowledges and agrees with the specifications listed in Appendix A of this agreement.

Use of Marks. Library agrees to comply with any requirements communicated by Midwest Tape with respect to the use of Midwest Tape's and Vendor's Marks. Library agrees that the Marks may only be used in connection with hoopla™ and the promotional and marketing materials relating thereto.

No Warranties or Representations by Library. Library represents and agrees that it, nor any of its employees, agents, and/or others under its direction, has not and will not make any representations or create any warranties, expressed or implied, to anyone concerning hoopla™; the Digital Media Platform, the Digital Media Applications, the hoopla™ Library Website, the hoopla™ Patron Website, or the Digital Content Titles.

Compliance with Applicable Laws and Regulations. Library will comply with all applicable laws, ordinances, rules and regulations, at its own expense, that may be required in any jurisdiction or by any administrative agency in connection with the use and/or operations of the Digital Media Platform, the Digital Media Applications, the hoopla™ Library Website, the hoopla™ Patron Website, or the Digital Content Titles.

III. FEES, PAYMENTS & REPORTING

Advance. Library shall remit to Midwest Tape a one-time, fully-recoupable, advance/down payment as specified in Appendix B, to be applied against future purchases as defined in the "per circulation program" below and in accordance with the Term and Termination section of this agreement.

Per Circulation Program. Midwest Tape will invoice Library under this Service Agreement on a per-circulation basis. A "circulation" occurs when a Patron selects borrow in hoopla™ for which the Digital Content Title will be loaned for a specific period of time that is terminated either (1) upon expiration of the established lending period, whether or not the Digital Content Title has been accessed and/or viewed by



Patron, or (2) when the Patron returns the Digital Content Title before the end of the lending period. The Service provides the Library with unlimited circulation capabilities per licensed copy of Digital Content which then in turn may be provided to an unlimited number of Patrons under this Agreement; but Digital Content may be limited to one (1) borrowed copy per patron

Invoicing and Payment. ~~Midwest Tape will invoice the Library on a monthly basis for the period for which payment is to be applied. The Library will be responsible for payment of the invoice within 15 days of the date of the invoice. If the Library fails to pay the invoice within 15 days of the date of the invoice, the Library has money remaining on account from the Advance, Midwest Tape will refund any unencumbered and unapplied money upon Library's written request.~~ See Section 3.3 Payment, of Contract.

Reporting. Through the hoopla™ Library Website, Library will have access to reports of circulation activity for the Digital Content Titles loaned by Library.

Taxes. Library is required to provide a sales tax exemption certificate, if applicable, to Midwest Tape as part of the on boarding process. If the library is not exempt, Midwest Tape will add, and collect, sales taxes to any purchases made pursuant to this Agreement.

IV. TERM AND TERMINATION

Term. The term of this Agreement begins on the Effective Date and continues for a period of 24 months thereafter. ~~Upon~~ ~~periods of 12 months~~ ~~the following:~~ The City will not agree to automatic renewals ~~provided automatic renewal is not requested by the City~~

By Notice. ~~Either Party may terminate this Agreement by providing the other Party with sixty (60) days written notice to the end of the term.~~ See Termination for Cause (Section 4.4) and Termination Without Cause (Section 4.5) of Contract.

Due to Breach. ~~Either Party may terminate this Agreement, by providing the other Party with ten (10) days written notice in the event of (1) the other Party's material breach of this Agreement, which breach continues uncorrected for a period of thirty (30) days; or (2) Library's failure to perform its payment obligations under Section III of this Agreement for a period of ten (10) days.~~

Upon termination of this Agreement, Library must immediately cease distribution and use of hoopla™ the (i) Digital Media Platform; (ii) Digital Content Titles; and (iii) the Marks, and pay Midwest Tape any fees accrued and owing under the Per Circulation Program. Once Library meets these obligations, any unapplied portion of an advance payment will be refunded within 30 days of conditions being met.

V. MIDWEST TAPE RIGHTS & OBLIGATIONS

Midwest Tape will host and support hoopla™ as provide in this Service Agreement and the Service Level Agreement (SLA).

Midwest Tape will provide an implementation specialist to work with the library to install and roll out hoopla™, as well as provide ongoing support in accordance with this Agreement. Midwest Tape will provide the library with access to the hoopla™ Library Website, which offers applicable tools to enable the library to manage the platform which include but not limited to lending policies which include: format



availability; tools for controlling access to parental advisory (music), ratings (movies and television), and individual titles. Other tools include dashboard and export capabilities, invoice copies, support templates/documents, monthly budget controls and reports. The Library Website will also host some of the newest additions, featured content and the most popular titles in the hoopla™, as well as, the latest news regarding the Service.

Ownership Rights of Vendor. Subject to the provisions of this Agreement, Vendors retain all Intellectual Property Rights in and to the Digital Content Titles, Metadata, Marks, and Promotional Postings, artwork or other materials delivered by Midwest Tape to Library hereunder:

Ownership Rights of Midwest Tape. Midwest Tape owns and retains all Intellectual Property Rights in and to hoopla™; the Digital Media Platform, the hoopla™ Library Website, the hoopla™ Patron Website, and the Digital Media Applications and all modifications, updates, or improvements made thereto. Library acknowledges Midwest Tape's ownership of such Intellectual Property Rights.

Modifications to Digital Media Platform. Midwest Tape has the right to modify, at any time, hoopla™; the Digital Media Platform, the hoopla™ Library Website, the Digital Media Applications, or hoopla™ Patron Website (i) as needed to optimize their respective operation, performance, or functionality; or (ii) as required by Vendors or (iii) as recommended by Library or patrons and approved at Midwest Tape's sole discretion.

Modifications to Digital Content Titles. Midwest Tape has the right to take the following actions with respect to any Digital Content Title at any time and for any reason: (i) set or adjust the applicable Per Circulation Fee; (ii) replace the files associated with each Digital Content Title and (iii) edit or modify editorial content and design. Significant modifications to content and the Service's functionality will be made available and provided to the library, at a minimum, in the form of a monthly digital newsletter and/or email.

If any modification above, made by Midwest Tape, materially impairs the value of this Agreement to Library, the Library may terminate this Agreement.

Addition and Removal of Digital Content Titles. As part of this Service, Midwest Tape will continuously update hoopla™ with additional Content. Midwest Tape may also remove Content from hoopla™ at any time and for any reason; including but not limited to Vendor terms and/or notification(s) to remove one or multiple titles.

Metadata. Midwest Tape will announce and provide, as available, additional Metadata features to the Library in the format supplied to Midwest Tape by the Vendors.

Storage. hoopla™ runs on a cloud-based platform to ensure it can scale to meet changing demands. While our web sites and the Service are publicly accessible, the database that powers the sites and services is deployed in a secure "virtual private cloud", or VPC. The VPC is completely protected from all public access. Amazon Web Services data centers are housed in nondescript facilities throughout North America with restricted access and multiple security controls.

Privacy Policy. Midwest Tape is committed to protecting the privacy, accuracy, and reliability of any personal information provided and to safeguard loss, misuse, unauthorized access, disclosure, and alteration of this information. The only access permitted to the VPC, and thus the database, is from Midwest Tape web sites and services and our hoopla system support staff located throughout North America and Canada. Sensitive data such as passwords are never stored "in the clear" in the database.



but are encrypted in a manner that prevents Midwest Tape and support staff from ever knowing what they are. When a patron registers with hoopla, the patron will enter an email, Library card ID, and a password (some Libraries require a PIN too) which is encrypted as noted above. This information is stored according to the above for purposes of hoopla™ to authenticate with the Library ILS, no additional personal information is stored by Midwest Tape and if received through authentication it is used only to verify the patron and then discarded.

Please refer to Midwest Tape's Terms and Conditions and Privacy Policy for more information on how hoopla™ uses and/or shares information that is gathered in the use of this website or hoopla™.

Hyperlinks. Midwest Tape will create the appropriate download links from the Library Website for the secure delivery of Digital Content Titles to Patrons.

Primary Support to Library. Midwest Tape shall provide the Library with primary support for hoopla™ by providing and maintaining help files, informational data and other appropriate documentation and training materials. Midwest Tape will undertake reasonable efforts to assist Library with its obligation to provide Primary Support to Patrons by providing Library with answers to "frequently asked questions" related to hoopla™, regular system updates as they become available and ongoing training for Library staff. Midwest Tape will supply activation support, including assisting with the implementation of any hoopla™ software, and reasonable levels of continuing support to assist the Library in its use of "the Service". Midwest Tape will make its personnel available for feedback, problem-solving, and/or general questions.

Midwest Tape will use reasonable efforts to provide continuous service. Permissible down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, public or private telecommunications services or internal nodes or facilities, failure of equipment or services outside the control of Midwest Tape. Scheduled down-time will be performed at a time to minimize inconvenience to Library and its Patrons.

Technical support services to the Library include: (I) reasonable efforts to identify, correct, and/or circumvent errors in hoopla™; the Digital Media Platform, the Digital Media Applications, the Digital Content Titles, the hoopla™ Library Website and the hoopla™ Patron Website; and (II) supply updates, enhancements, and new versions of hoopla™ as they become available (the "Secondary Support").

For avoidance of doubt, Midwest Tape has no obligation to provide Primary Support to Patrons. Midwest Tape's sole involvement with respect to Primary Support for Patrons is limited to that provided by Midwest Tape, in its sole discretion.

VI. AGREEMENT PROVISIONS

Indemnities. ~~Each Party from and against all claims, damages, losses, legal proceedings, and costs of action that arise out of or result from the use of the Service, including but not limited to all damages, costs, expenses, reasonable attorneys' fees, judgments, and settlements resulting from such Claims, provided, however, that no Claim may be settled without the express written consent of the indemnifying Party. Notwithstanding anything contained herein to the contrary, Midwest Tape acknowledges and agrees that Library can only indemnify Midwest Tape up to the limits of liability provided by their state law.~~ See Section 7.7, Indemnity, of Contract. ~~Indemnify, and hold harmless the other Party, from and against all claims, damages, losses, legal proceedings, and costs of action that arise out of or result from the use of the Service, including but not limited to all damages, costs, expenses, reasonable attorneys' fees, judgments, and settlements resulting from such Claims, provided, however, that no Claim may be settled without the express written consent of the indemnifying Party. Notwithstanding anything contained herein to the contrary, Midwest Tape acknowledges and agrees that Library can only indemnify Midwest Tape up to the limits of liability provided by their state law.~~

Indemnity Process. ~~The Party seeking indemnification must provide prompt written notice to the indemnifying Party of any Claim to which indemnity obligations apply. The indemnifying Party has the~~



~~right, but not the duty, to control the defense and settlement of any Claims with counsel of its choosing. The Party seeking indemnification will cooperate with the indemnifying Party's defense against the Claims. If any Claim is covered in part but not entirely by a Party's indemnification obligation hereunder, the indemnifying Party will only be responsible for costs to the extent attributable to the covered portion of the Claim.~~

DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, MIDWEST TAPE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING ANY GOOD OR SERVICE THAT MAY BE PROVIDED BY MIDWEST TAPE UNDER THIS AGREEMENT. CONTRACTOR WARRANTS THAT SERVICES WILL BE PERFORMED IN A PROFESSIONAL MANNER AND THAT IT WILL USE PROFESSIONAL EFFORTS IN COMPLIANCE WITH INDUSTRY STANDARDS WHEN PROVIDING THE SERVICES.

LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, IN NO EVENT, AND REGARDLESS OF THE CAUSE OF ACTION, WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOST BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREON.

Confidential Information. "Confidential Information" means any oral, written, graphic or machine-readable information of either Party that is disclosed to the other Party under this Agreement either directly or indirectly, in writing, orally, electronically, or by inspection of tangible objects, and that is designated in writing as "Confidential" at the time of disclosure or within five (5) days thereafter. Confidential Information may include information disclosed to any Party by a third-party on behalf of the other Party and designated as Confidential Information. Confidential Information includes, without limitation, business plans, customer information, pricing, contract terms, available content and sales, marketing and/or finances of the disclosing Party.

Parties' Obligations. Confidential Information is the property of the disclosing Party, and the receiving Party will not be deemed by virtue of its access to Confidential Information to have acquired any right or interest in or to any such Confidential Information. Confidential does not affect either Party's right to use or disclose information that is not Confidential Information, including information that is or may hereafter be in the public domain; the receiving Party can show was known to it without any confidentiality obligation prior to the disclosure by the disclosing Party; may be required to be disclosed pursuant to governmental or judicial process, provided that notice of such process is promptly provided to the disclosing Party in order that it may have every opportunity to intercede in such process to contest such disclosure or seek an appropriate protective order.

Assignment. Except as provided herein, neither Party may, by operation of law or otherwise, assign, sublicense, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, which may not be unreasonably withheld or delayed. Either Party may assign, transfer, or otherwise delegate any or all of its rights and obligations under this Agreement to any successor carrying on that part of the business to which this Agreement relates or to any purchaser of all or substantially all of the assets or stock of such Party. Each Party may appoint contractors to perform part of its obligations hereunder, provided that the Party remains fully responsible for such contractor's performance. This Agreement binds, benefits, and is enforceable by and against both Parties and their respective successors and permitted assigns.



Notices. Notices required by this Agreement must be sent by United States mail, as well as by electronic mail (or by facsimile), directed as follows:

Midwest Tape:
Attn: hoopla™
6950 Hall Street
Holland, Ohio 43528
info@midwesttapes.com
1 (800) 875-2785
Fax: (419) 888-9749

Library: _____

Amendment. No amendment, modification, addendum, or revision to this Agreement is valid unless it is in writing and signed by all Parties to this Agreement, in which event there need be no separate consideration thereof.

Severability. To the extent a provision of this Agreement is deemed by a court to be null and void, the Agreement nonetheless remains in full force and effect with respect to each of the other provisions therein, except to the extent that the Distribution provisions of this Agreement (i.e. Rights, Limitations, Ownership Rights) are declared null and void by a court, in which case the Agreement is voidable by any Party.

Arms-Length Negotiations. This Agreement was negotiated among the Parties at arm's length with each Party receiving advice from independent legal counsel, and has been executed and delivered in good faith. It is the intent of the Parties that no part of this Agreement should be construed against any Party because of the identity of the drafter.

Counterparts. This Agreement may be executed in counterparts, each of which taken together constitutes one single Agreement between the Parties.

Entire Agreement. ~~This Agreement is an integrated Agreement containing the entire understanding between the Parties regarding the subject matter of this Agreement, and, except as set forth in this Agreement, no representations, warranties or promises have been made or relied upon by the Parties. This Agreement prevails over all prior communications or agreements between the Parties or their representatives regarding the subject matter hereof.~~

Force Majeure. No Party may be considered in default or to have incurred any liability hereunder due to any failure to perform this Agreement should such failure arise out of causes beyond its reasonable control, including, without limitation, work stoppages, fires, riots, accidents, floods, storms, unavailability of utilities or fuel, Internet or other communication failures, or other similar failures or occurrences. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first written above.

ACCEPTED AND AGREED

Library: _____

By: _____

Print Name: _____

Title: _____

Date Signed: _____

ACCEPTED AND AGREED

MIDWEST TAPE, LLC

By: _____

Date Signed: _____



Appendix A

Communication of hoopla™

hoopla™ is a patron driven digital service, which makes it unique from other digital services offered by the Library. hoopla™ does not require annual subscription fees or large sums for limited copies of content. Libraries have access to all content, all the time. Our goal is to support the Library by providing a service that allows patrons to easily access content, 24/7, in an affordable and controllable model.

Midwest Tape's is known for providing quality customer service which shall be no different in our hoopla™ service offering. We make it our mission to aim for ideas and development that benefit libraries and support the ongoing objective to stay current in communities as well as enhancing efforts to reach and engage current and new patrons

hoopla™ provides the Library with a service to easily engage patrons which begins when the Library initiates communications about the availability of "the Service". Following are steps to ensure best faith efforts in communicating "the Service" (some of which the Library may already do as part of standard processes):

- Library agrees to collaborate with Midwest Tape in efforts to reach patrons using innovative ideas and library proven successful methods. Library will make reasonable, ongoing efforts to communicate hoopla™ to its patrons.
- Library agrees to install prominent links and/or reference to popular content on hoopla™ and/or the hoopla™ Patron Website on the Library's Website homepage
- Library agrees to regularly display, within the Library branches, Midwest Tape-provided communications materials, as made available and/or provide cross reference to content available in "the Service".
- Library agrees to use MARC record data in their catalog to enhance discoverability of key content available in "the Service".
- Library agrees to take all reasonable steps to notify patrons via Newsletters, direct email, and/or Social Media of updates to functionality and content as well as promotion and marketing communication announcements.
- In lieu of (or supplemental to) the above step, Library agrees to allow (and/or provide as is legally permissible) hoopla access to its cardholder patron mailing lists (electronic/print) for the following types of relationship-building campaigns / announcements:
 - Awareness creation
 - Library / hoopla user "Welcome" campaign
 - Periodic (seasonal / relational) hoopla use support
 - User recovery / reminder campaigns



Appendix B

Advance Schedule

Population of Service Area	Advance
> 1,000,000	\$ 100,000
500,000 - 999,999	\$ 75,000
300,000 - 499,999	\$ 50,000
200,000 - 299,999	\$ 35,000
100,000 - 199,999	\$ 25,000
50,000 - 99,999	\$ 12,000

Service Agreement Advance

(Fill in according to Schedule Above)

Population of Service Area	Advance
300,000 - 499,999	\$ 50,000

**EXHIBIT B
NON-SUSPENSION OR DEBARMENT CERTIFICATION**

**City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

EXHIBIT C
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

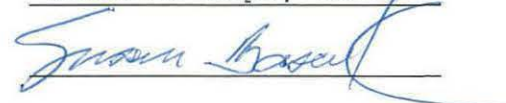
Dated this 10th day of February, 2016, _____

CONTRACTOR

Authorized
Signature

Title

Midwest Tape, LLC



V.P. Business Development

EXHIBIT D
FORM 1295 “CERTIFICATE OF INTERESTED PARTIES” INSTRUCTIONS

CITY OF AUSTIN
PURCHASING OFFICE

FORM 1295 “CERTIFICATE OF INTERESTED PARTIES” INSTRUCTIONS

As required by Section 2252.908 of the Texas Government Code, the Business Entity constituting the Offeror is required to submit to the City a complete Form 1295 “Certificate of Interested Parties” that is signed and notarized prior to contract execution.

The Business Entity will use Form 1295 to make and reaffirm the disclosure of Interested Parties. See definitions below:

1. **Interested Party** – a person who has a Controlling Interest in a Business Entity with whom the City contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.
2. **Controlling Interest** – means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stocks or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers
3. **Business Entity** – any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

Revised December 2015



Midwest Tape, LLC
6950 Hall Street; Holland, Ohio 43528

October 20, 2015

Sandra Cannon
Austin Public Library
800 Guadalupe St.
Austin, TX 78701

RE: Amendment to hoopla Service Agreement

Dear Ms. Cannon,

We thank you for your continued confidence in our hoopla digital platform and the service to your patrons has been successful.

Please accept this letter as confirmation that Austin Public Library is requesting to amend the original term of the hoopla Service Agreement for a twelve (12) month term with three (3), one (1) year annual renewals. An amount of \$120,000.00 is acceptable as an annual advance for use of the service by your patrons. Total contract not to exceed the amount of \$537,500.

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

Sincerely,

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

Sue Bascuk
VP of Business Development
SBascuk@midwesttapes.com

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

Certificate Number:
2017-155781

Date Filed:
01/18/2017

Date Acknowledged:

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

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

Austin Public Library

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.

hoopladigital
Hoopla Digital Platform & Support

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

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



MARY J JACOBS
Notary Public
In and for the State of Ohio
My Commission Expires
July 2, 2019

STAMP / SEAL ABOVE

Susan Baseuk
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Susan Baseuk, this the 18th day of January, 2017, to certify which, witness my hand and seal of office.

Mary J Jacobs
Signature of officer administering oath

Mary J Jacobs
Printed name of officer administering oath

Exec Assistant
Title of officer administering oath



City of Austin FSD Purchasing Office

Certificate of Exemption

PR20641

DATE: 12/12/2014

DEPT: Library

TO: Purchasing Officer or Designee

FROM: Xavier Ramirez/Sandra Cannon

BUYER: Shawn Willett 512-974-2274

PHONE: (512) 974-7477

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

- equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
 - cooperative purchasing administered by a regional planning commission established under Chapter 391
 - ☐ services performed by blind or severely disabled persons
 - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
 - ☐ electricity
 - ☐ advertising, other than legal notices
 - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

See Attached Vendor Letter

Midwest Tape (MWT) a full service distributor working exclusively with public libraries is taking the process of viewing physical goods digitally. MWT is the sole source vendor of the library branded digital platform for mobile apps, Hoopla. Hoopla provides libraries an easy to use pure lending content delivery model that enables patrons to instantly and simultaneously borrow fresh videos, full albums of music, and audiobooks. The model includes multiple administrative tools including reports on usage and trends, and multiple management options like limit items and budgetary stops.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Midwest Tape, LLC which will cost approximately \$ 50,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Xavier Ramirez SLC 12/1/14
Originator Date

Approved
Certification

Victoria Rieger 12/12/14
Department Director or designee Date

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Jane Neal 4/23/15 J.H.
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013