

CONTRACT BETWEEN THE CITY OF AUSTIN
And
SWANK MOTION PICTURES INC
For
MOVIE LICENSING COVERAGE FROM 8/1/17 – 7/31/22
MA-5600-NS170000059

10795 WATSON RD. ST. LOUIS MO 63127 *Handwritten*

This Contract is between Swank Motion Pictures Inc. at ~~201 S Jefferson Ave, St. Louis, MO 63103~~ and the City, a home-rule municipality incorporated by the State of Texas.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 Exhibit A, Supplemental Terms
- 1.1.3 Exhibit B, Swank Motion Pictures Inc. Offer
- 1.1.4 Exhibit C, Non-Discrimination Certification
- 1.1.5 Exhibit D, Non-Suspension or Debarment Certification

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This Contract
- 1.2.2 Exhibit A
- 1.2.3 Exhibit B

1.3 Quantity. Quantity of goods or services as described in Exhibit B.

1.4 Term of Contract. The Contract will be in effect on August 1, 2017 and shall remain in effect for five (5) years, ~~or the City terminates the Contract.~~ *Handwritten*

1.5 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$27,610.00, including all fees and expenses.

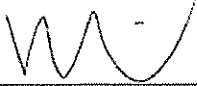
This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

Swank Motion Pictures Inc.

MJ MISSELPORN

Printed Name of Authorized Person



Signature

CUSTOMER RELATIONSHIP MGR.

Title:

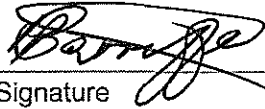
7/31/17

Date:

CITY OF AUSTIN

Paula Barriffe

Printed Name of Authorized Person



Signature

Procurement Specialist 1

Title:

08/01/2017

Date:

Exhibit Listing

Exhibit A	Supplemental Terms
Exhibit B	Swank Motion Pictures Inc. Offer
Exhibit C	Non Discrimination Certification
Exhibit D	Non Suspension or Debarment Certification

Exhibit A
Supplemental Terms

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be MJ Misselhorn, Phone: (877)321-1300, Email: mmisselhorn@movlic.com. The City's Contract Manager for the engagement shall be Jorge Valle; Phone: (512)974-7432, Email: Jorge.Valle@austintexas.gov.

2. **Invoices.**

Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management (CTM)
Attention	Accounts Payable
Email Address	CTMAPIInvoices@austintexas.gov

3. **Travel Expenses.** Travel expenses are not authorized under this Contract.

4. **Equal Opportunity**

4.1.1 **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.

4.1.2 **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. **Right To Audit**

5.1.1 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.

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

Exhibit B
Swank Motion Pictures Inc. Offer



To: Sharon Herfurth, Austin Public Library
From: MJ Misselhorn, Movie Licensing USA
Re: Movie Licensing Coverage from 8/1/17 – 7/31/22
Date: July 17, 2017

2017 5 Year Movie Licensing Renewal Quote: \$27,610

Number of Library Locations: 22

Sole Source Studio Coverage:

Walt Disney Pictures, Paramount Pictures, Warner Bros., Sony Pictures, NBC/Universal Pictures, New Line Cinema, Lionsgate Films, MGM, Touchstone Pictures, Hollywood Pictures, Columbia Pictures, TriStar Pictures, Summit Entertainment, Focus Features, Miramax, Warner Independent Pictures, Fine Line Features, United Artists, Warner Independent Films, Paramount Vantage, and Screen Gems.

MJ Misselhorn | Customer Relationship Manager | P: 877.321.1300 | E: mmisselhorn@movlic.com 187436
Movie Licensing USA | 10795 Watson Road | St. Louis, MO 63127 | United States of America | www.movlic.com

Exhibit C
Non Discrimination Certification

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 31 day of July, 2017

CONTRACTOR

SWANK MOTION PICTURES

Authorized Signature

[Signature]

Title

CUSTOMER RELATIONSHIP MGR.

Exhibit D

City of Austin, Texas
Section 0805

NON-SUSPENSION OR DEBARMENT CERTIFICATION

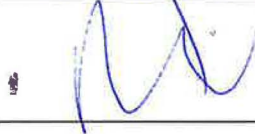
The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal 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.

Contractor's Name:

SWANK MOTION PICTURES

Signature of Officer or
Authorized
Representative:



Date: 7-31-17

Printed Name:

MJ MISSELHORN

Title

CUSTOMER RELATIONSHIP MGR.



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 07/13/2017 DEPT: Library
TO: Purchasing Officer or Designee FROM: Sharon Herfurth
BUYER: Elisa Folco PHONE: (512) 974-7420

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.

The Public Performance Site License from Movie Licensing USA, a Division of Swank Motion Pictures, Inc., is a sole source product. Movie Licensing USA is the exclusive licensing agent for twenty major motion picture studios and their affiliates.

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).

No other companies provide a license for public libraries to legally conduct public screenings of copyrighted films from the following studios: Walt Disney Pictures, Warner Bros. Pictures, Paramount Pictures, Hollywood Pictures, Metro-Goldwyn-Mayer, Sony Pictures, NBC Universal, Columbia Pictures, TriStar Pictures, Touchstone Pictures, United Artists, Miramax Films, Lionsgate, Summit Entertainment, New Line Cinema, Focus Features, Warner Independent Films, Paramount Vantage, and Screen Gems.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Swank Motion Pictures, Inc. - 5 year contract which will cost approximately \$27,610.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Shawn Hefner 7-13-2017
Originator Date

Approved
Certification

Calene McBe 7/13/17
Department Director or designee Date

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

Purchasing Review
(if applicable)

Bamjo 08/01/17 JTH
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

[Signature] 8/1/17
Purchasing Officer or designee Date

02/26/2013

Movie Licensing USA®

A Division of Swank Motion Pictures, Inc. • Tim Swank, Chairman

To Whom It May Concern:

This letter serves as confirmation that the *Public Performance Site License* is a sole source product. Movie Licensing USA is the exclusive licensing agent for the following major motion picture studios and their affiliates:

- | | |
|-------------------------|----------------------------|
| ▪ Walt Disney Pictures | ▪ United Artists |
| ▪ Warner Bros. Pictures | ▪ Miramax Films |
| ▪ Paramount Pictures | ▪ Lionsgate |
| ▪ Hollywood Pictures | ▪ Summit Entertainment |
| ▪ Metro-Goldwyn-Mayer | ▪ New Line Cinema |
| ▪ Sony Pictures | ▪ Focus Features |
| ▪ NBC Universal | ▪ Fine Line Features |
| ▪ Columbia Pictures | ▪ Warner Independent Films |
| ▪ TriStar Pictures | ▪ Paramount Vantage |
| ▪ Touchstone Pictures | ▪ Screen Gems |

The Federal Copyright Act (Title 17 of the US Code) governs how copyrighted materials, such as movies, may be used. Neither the rental nor the purchase of a movie carries with it the right to show the movie publicly outside the home, unless the site where the movie is used is properly licensed for public exhibition. Movie Licensing USA provides this *Public Performance Site License* to Public Libraries across the nation so that these entertainment movies can be shown legally in their buildings.

Movie Licensing USA is a division of Swank Motion Pictures, Inc. We have served as the non-theatrical distributor for the major motion picture studios for over 75 years. No division of Movie Licensing USA, nor any other company, makes a similar or competing product. This product must be purchased directly by institutions from Movie Licensing USA at the address listed above. There are no agents or dealer authorized to represent this product. Additionally, competition is precluded by the existence of a contractual agreement with the above mentioned motion picture studios. There is no other like licensing available for purchase that would serve the same purpose and function.

If you require additional information, please contact us toll-free at (888) 267-2658 or visit our website at: <http://library.movlic.com>. Thank you for your interest in movie copyright compliance.

Sincerely,

MOVIE LICENSING USA



Tim Swank
Chairman



To: Sharon Herfurth, Austin Public Library
From: MJ Misselhorn, Movie Licensing USA
Re: Movie Licensing Coverage from 8/1/17 – 7/31/22
Date: July 17, 2017

2017 5 Year Movie Licensing Renewal Quote: \$27,610

Number of Library Locations: 22

Sole Source Studio Coverage:

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