



DeWight Dopslauf, C.P.M., CPPO
Harris County Purchasing Agent

May 27, 2021

Commissioners Court
Harris County, Texas

RE: Sole Source Exemption – Local Government Code § 262.024 (a)(7)

Members of Commissioners Court:

Please approve a sole source exemption from the competitive bid requirements, the attached Order authorizing the County Judge to execute the attached Fourth Amendment to the Agreement and fifth and final renewal option for the following:

Description: License Access, Maintenance, Support and/or Warranty for Digital Content Materials Manufactured by OverDrive, Inc. for the Harris County Public Library

Vendor: OverDrive, Inc.

Amount: \$1,250,000 additional funds for the term through 7/22/22
2,750,000 previously approved funds for the term 7/23/20 – 7/22/21
\$4,000,000

Reviewed by: X Public Library X Harris County Purchasing

The Fourth Amendment adds one (1) one-year renewal option and funding for digital content materials and related services. The Office of the Harris County Purchasing Agent has confirmed the sole source exemption. A purchase order will be issued upon Commissioners Court approval.

Sincerely,

DeWight Dopslauf
Purchasing Agent

MDH
Attachment
cc: Public Library
Vendor

FOR INCLUSION ON COMMISSIONERS COURT AGENDA JUNE 8, 2021



21-2568

**FOURTH AMENDMENT TO THE AGREEMENT BETWEEN HARRIS COUNTY AND
OVERDRIVE, INC.**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Amendment to the above-referenced Agreement is made and entered into by and between Harris County (the "County") a body corporate and politic under the laws of the State of Texas, acting by and through Harris County Public Library ("Library"), and OverDrive, Inc. ("Contractor"). The County and Contractor are referred to herein collectively as the "Parties" and individually as a "Party."

Recitals

On June 28, 2016, the Commissioners Court approved an agreement (the "Master Agreement") with OverDrive, Inc. for licenses to digital content materials and access to its platform to enable the Library to lend downloaded materials through its website.

The Master Agreement is a sole source pursuant to Tex. Loc. Gov't Code Ann. §262.024(a)(7), as amended.

On or about July 9, 2019, the Parties amended the Master Agreement for the purpose of adding the "Instant Digital Card Service" and to extend the Master Agreement for two (2) additional one-year terms ("First Amendment").

On or about May 15, 2020, the Parties amended the Master Agreement for the second time for the purpose of adding additional funds for digital content materials and related services provided under the Master Agreement ("Second Amendment").

On or about July 28, 2020, the Parties amended the Master Agreement for the third time for the purpose of adding additional funds for digital content materials and related services provided under the Master Agreement ("Third Amendment").

Both the County and Contractor now desire to amend the Master Agreement for the fourth time for the purpose of extending the Master Agreement for one (1) additional one-year term and to provide additional funding ("Fourth Amendment").

Contractor warrants and represents that it is willing and capable of providing the Services.

Terms

I.

The Parties expressly acknowledge that the Master Agreement is incorporated herein by reference.

II.

The Master Agreement is hereby amended to add one (1) additional one (1) year Renewal Term. The County shall exercise this Renewal Term upon execution of this Amendment by all Parties and the Renewal Term shall last for twelve (12) consecutive months.

III.

The Master Agreement is hereby amended to increase the funds available to pay for Services in the amount of One Million Two Hundred Fifty Thousand and No/Dollars (\$1,250,000.00) in order to meet the total renewal term amount of Four Million and No/Dollars (\$4,000,000.00).

IV.

LIMIT OF APPROPRIATION: Contractor understands and agrees, said understanding and agreement being of absolute essence to this Amendment, that the total maximum compensation that Contractor may become entitled to for the Services performed under this Amendment, and the total maximum sum that the County shall become liable to pay to Contractor under this Amendment, shall not under any conditions, circumstances, or interpretations thereof exceed the sum of One Million Two Hundred Fifty Thousand and No/Dollars (\$1,250,000.00) as certified available by the Harris County Auditor as evidenced by the issuance of a Purchase Order from the Harris County Purchasing Agent.

Contractor understands and agrees, said understanding and agreement also being of the absolute essence of this Amendment, that the total maximum compensation that Contractor may become entitled to hereunder, and the total maximum sum that the County shall become liable to pay to Contractor hereunder, shall not under any conditions, circumstances, or interpretations thereof exceed the sum certified by the Purchase Order. Any Services performed or expenses incurred by the Contractor prior to the issuance of a Purchase Order are at the Contractor's own expense and are not reimbursable. Notwithstanding anything to the contrary, or that may be construed to the contrary, the County's liability under the terms and provisions of this Amendment is limited to the funds on the Purchase Order; and that when all the funds so certified are expended, Contractor's sole and exclusive remedy shall be to terminate this Amendment.

If the Services and charges to be provided for will equal or exceed the amount certified available, Contractor will notify the County immediately. If the amount certified is depleted prior to the end of the term of this Amendment, Contractor may terminate all Services hereunder upon the total depletion of the certified funds unless the County, at its sole option, certifies additional funds, as evidenced by a written amendment to this Agreement and the Purchase Order, in which event Contractor shall continue to provide the Services herein specified to the extent funds are available.

With regard to any renewal or extension of this Amendment, the County has not allocated any funds for any renewal or extension period beyond the current fiscal year. Therefore, if the County exercises any renewal option, the renewal is subject to the future allocation and certification of funds for the renewal period and in accordance with the terms and conditions of this Amendment. Failure to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Amendment.

V.

It is expressly understood and agreed that the Master Agreement is incorporated herein by reference. In the event of any conflict between the terms and provisions of this Amendment, or any portion thereof, and the terms and provisions of any other part or portion of the Master Agreement or any other terms and conditions, this Amendment shall control.

VI.

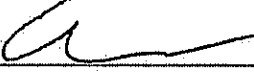
All other terms and provisions of the Master Agreement shall remain in full force and effect as originally written.

VII.

Execution, Multiple Counterparts: This Amendment may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Amendment.

[Execution Page Follows]

OVERDRIVE, INC.

By: 
Name: Erica Lazzaro
Title: EVP & General Counsel
Date: 5/26/21

HARRIS COUNTY

By: _____
LINA HIDALGO
COUNTY JUDGE

APPROVED AS TO FORM:
CHRISTIAN D. MENEFEE
COUNTY ATTORNEY

By: Sam Kirchhoff
Sam Kirchhoff
Assistant County Attorney
C.A. File 21GEN1326

ORDER OF COMMISSIONERS COURT
Authorizing execution of an amendment to an agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the ____ day of _____, 2021 with all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AN AMENDMENT TO THE AGREEMENT
WITH OVERDRIVE, INC.**

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED that County Judge Lina Hidalgo be, and she is hereby, authorized to execute for and on behalf of Harris County, an Amendment to the Master Agreement between Harris County and OverDrive, Inc. for the purpose of adding one renewal term, exercising the renewal term, and to provide additional funding for digital content materials and related services under the Master Agreement, at a cost not to exceed One Million Two Hundred Fifty Thousand and No/Dollars (\$1,250,000.00). The Amendment is incorporated herein as though fully set forth word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.