


Date: May 23, 2025

To: Mark Scott, City Manager

From: Margaret M. Neill, Library Division Director 

Via: Maria Sanchez-Tucker, Community Services Director 

Marcella Apodaca, Business Operations Manager 

Subject: Request for Approval of Contract Amendment for Digital Materials

Vendor Name: Kanopy

Munis Vendor Number: 8594

ITEM AND ISSUE:

Community Services/Library Division respectfully requests your review and approval of Amendment #1 to 3250286 with Kanopy (OverDrive Holdings, Inc.) for digital media streaming. Amendment #1 increases the amount of compensation by \$36,337.76 for a total compensation of \$86,337.76 for a term that ends on September 27, 2025.

CONTRACT NUMBER:

The FY25 Munis contract number is 3250286

BACKGROUND AND SUMMARY:

The Library Division is requesting a contract amendment to expend all funding for digital materials. The original contract was approved on November 16, 2024. The original item number assigned by the City Clerk was 24-0700. The contract with Kanopy will expire on September 27, 2025. Please note that Kanopy has been acquired by OverDrive Holdings, Inc. and the certificate of insurance is now held by OverDrive Holdings, Inc.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: General Fund/100

Munis Org Name/Number: Library Admin/1000101

Munis Object Name/Number: Service Contracts/510310

Budget Officer / Designee: Andy Hopkins **Date:** 05/28/2025

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-98, Exempt

Chief Procurement Officer (CPO)/Designee:  Date: 05/28/2025

CPO Comment/Exceptions: NMSA 1978, Section 13-1-98(E)

ASSOCIATED APPROVALS:

IT Components included? ☐ Yes | ☒ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Treasury/Point of Sale Components included? ☐ Yes | ☒ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☒ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Construction to City Facilities, Furniture, and/or Fixtures included? ☐ Yes | ☒ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Is this an externally funded purchase? ☐ Yes | ☒ No

If yes, what is the issuing agency: _____

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Is this a Capital Asset or Project? ☐ Yes | ☒ No

Project Ledger Number: _____

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

ATTACHMENTS:

Horizons declination

CPO Service Determination Email

Procurement document: Exemption Determination/Email

Vendor's Quote

Certificate of Liability Insurance (COI)

General Services Contract

**CITY OF SANTA FE
AMENDMENT No. 01 TO
Digital Media Contract
ITEM# 24-0700**

This AMENDMENT No. 01 (the "Amendment") amends the CITY OF SANTA FE DIGITAL MEDIA CONTRACT, dated November 16, 2024 (the "Contract"), between the City of Santa Fe (the "City") and Kanopy, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Contract, Contractor has agreed to provide digital library materials.

B. Pursuant to Article 10(g) of the Contract and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

The Contract is amended to increase the amount of compensation listed in Article 4(a) by a total of \$36,337.76 so that the new total amount of compensation for this Contract shall not exceed \$86,337.76.

2. CONTRACT IN FULL FORCE.

Except as specifically provided in this Amendment, the Contract remains and shall remain in full force and effect, in accordance with its terms.

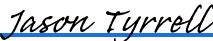
IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Contract as of the dates set forth below.

CITY OF SANTA FE:


Mark Scott (Jun 2, 2025 13:00 MDT)
MARK SCOTT, CITY MANAGER

DATE: 06/02/2025



CONTRACTOR:
Kanopy, Inc.


Jason Tyrell (May 23, 2025 10:07 PDT)
Jason Tyrell, General Manager

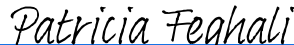
DATE: 05/23/2025

CRS# EIN: 99-0377373

ATTEST:


ANDREA SALAZAR (Jun 4, 2025 21:55 MDT)
CITY CLERK 

CITY ATTORNEY'S OFFICE:


Patricia Feghali (May 23, 2025 10:51 MDT)
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:


FINANCE DIRECTOR

Approved

These services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities and are available through Horizons of New Mexico.

Please note that the Council is in the process of reviewing and adding services that are suitable for State Use and services may be added or removed from this list in the future.

-
- ADA Accessibility Consulting Services
 - Auctioneering Services
 - Bulk Mailing and Sorting
 - Botanical Services
 - Call Center Services
 - Car Washing
 - Clerical Data Entry
 - Computer Refurbishing
 - Courier Services
 - Debris Removal
 - Decontamination, Sanitation and Sterilization Services
 - Dishwashing Services
 - Document Imaging
 - Document Shredding
 - Envelope Stuffing
 - Event Planning
 - General Labor
 - Greeting Services
 - Hard Drive Destruction
 - Janitorial and Housekeeping Services - Including COVID-19 Disinfecting and other Disinfecting Services
 - Kit Assembling
 - Landscape Irrigation
 - Landscaping

- Lobby Attendant
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Medical Waste Disposal
- Meeting Minute Preparation Services
- Moving Services
- Pest Control and Extermination Services
- Plant Rental Services
- Printing Services
- Receptionist, Filing and Clerical Services
- Recycling Services
- Rest Area Maintenance
- Screen Printing
- Shelf Stocking and Restocking
- Snow Removal
- Transcription Services
- Transportation
- Wildlife Services Management
- Yard, Grounds, and Lawn Maintenance

From: DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>
Sent: Monday, July 15, 2024 1:55 PM
To: NEILL, MARGARET M. <mmneill@santafenm.gov>
Subject: RE: Purchasing Exemption-Kanopy

Hi, this is exempt per NMSA 1978, Section 13-1-98 (E).

Thank you.

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

<https://santafenm.gov/finance-2/purchasing-1>

Internal Link: https://intranet.santafenm.gov/finance_1



From: NEILL, MARGARET M. <mmneill@santafenm.gov>
Sent: Monday, July 15, 2024 12:44 PM
To: DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>
Subject: Purchasing Exemption-Kanopy

Hi Travis,

I am requesting a purchasing exemption for Kanopy, which is one of our vendors for digital media-streaming movies, documentaries, educational programs, television shows, etc.

We have not yet allocated funds for FY25, but the estimate for Kanopy is \$50,000.00 using a mix of state funding and general fund money.

I am requesting to use NM Stat § 13-1-98 -E (2023): purchases of books, periodicals, instructional materials and training materials in printed, digital or electronic format from the publishers, designated public-education-department-approved instructional material depositories or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;

Thank you for your time and attention to this request.

Margaret M. Neill (*she/her/hers*)
Library Division Director
City of Santa Fe
Office: (505) 955-6788 / Cell: (505) 479-1646

145 Washington Ave. Santa Fe, NM 87501

mmneill@santafenm.gov



Santa Fe Public Library

Community Services Department, City of Santa Fe, New Mexico



Kanopy Inc. Quote

Quote Date: 04/30/2025

Quote Number: KPPU-04302025

Quoted To: Santa Fe Public Library
145 Washington Avenue
Santa Fe, NM 87501-2016
US

PPU Quote Summary:

- 15 tickets per patron per month
- Access to all 31,000+ films and TV shows
- Kanopy Kids included as Pay-per-use

This Quote is entered into between Institution and Kanopy pursuant to the current Master Agreement between them. Any capitalized term not defined herein shall have the meaning ascribed to it in the Master Agreement. By issuing payment hereunder or accessing or using the Offerings identified herein, Institution agrees to be bound by this Quote.

Offering	Total (USD)
	\$36,337.76

Pay Per Use (PPU) Program

- Budget allocation: \$36,337.76

Pay Per Use (PPU) Program

- **Access:** Kanopy will provide Institution and its End Users with access to Kanopy's film database. Institution may adapt its content and collection selections at any time.
- **Caps:** Institution may impose monthly user caps on users (with respect to the number of film "Play Tickets" an End User may incur in a given month) and change these at any time with written notice to Kanopy. Institution may also set in place program spend caps and change these at any time.
- **Definition:** As used herein, one or more "Play Tickets" are incurred on a Title when an End User accesses the Title and seeks to employ the Title for use. Once user Play Tickets have been logged, depending on the Title selected, the User will have either

3 full days (72 hours) or 2 full days (48 hours) to watch the film for unlimited uses. Once user Play Tickets have been logged in the context of episodic Titles, the User will have between three and seven days to watch a season of the Episodic Title for unlimited use. Kanopy Kids provides 30 days of unlimited use for the entirety of Kanopy Kids. A user can track their existing and past Play Tickets from their user dashboard.

- **Cost per Ticket:** A maximum cost of \$1 per User Play Ticket. A maximum cost of \$5 per play for Kanopy Kids. Processing: Invoices for Play Tickets will be processed periodically for the Institution (monthly). Institution will be notified and sent an invoice. Institution may request early processing of Play Ticket invoices at any time.

Kanopy, One OverDrive Way, Cleveland, OH 44125 USA
Kanopy Inc., EIN 99-0377373
www.kanopy.com



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
05/20/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York NY Office One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105 E-MAIL ADDRESS:														
INSURED OverDrive Holdings, Inc. One OverDrive Way Cleveland OH 44125 USA	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Continental Casualty Company</td><td>20443</td></tr><tr><td>INSURER B: The Continental Insurance Company</td><td>35289</td></tr><tr><td>INSURER C: Valley Forge Insurance Co</td><td>20508</td></tr><tr><td>INSURER D: Lloyd's Syndicate No. 2623</td><td>AA1128623</td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Continental Casualty Company	20443	INSURER B: The Continental Insurance Company	35289	INSURER C: Valley Forge Insurance Co	20508	INSURER D: Lloyd's Syndicate No. 2623	AA1128623	INSURER E:		INSURER F:	
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INSURER F:															

COVERAGES CERTIFICATE NUMBER: 570112613881 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS												
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			6080688803	06/09/2024	06/09/2025	<table><tr><td>EACH OCCURRENCE</td><td>\$1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$1,000,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$15,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$2,000,000</td></tr><tr><td>PRODUCTS - COM/OP AGG</td><td>\$2,000,000</td></tr></table>	EACH OCCURRENCE	\$1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000	MED EXP (Any one person)	\$15,000	PERSONAL & ADV INJURY	\$1,000,000	GENERAL AGGREGATE	\$2,000,000	PRODUCTS - COM/OP AGG	\$2,000,000
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GENERAL AGGREGATE	\$2,000,000																		
PRODUCTS - COM/OP AGG	\$2,000,000																		
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			6080688817	06/09/2024	06/09/2025	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td></td></tr><tr><td>BODILY INJURY (Per accident)</td><td></td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td></td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000	BODILY INJURY (Per person)		BODILY INJURY (Per accident)		PROPERTY DAMAGE (Per accident)					
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BODILY INJURY (Per accident)																			
PROPERTY DAMAGE (Per accident)																			
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			6080688848	06/09/2024	06/09/2025	<table><tr><td>EACH OCCURRENCE</td><td>\$15,000,000</td></tr><tr><td>AGGREGATE</td><td>\$15,000,000</td></tr></table>	EACH OCCURRENCE	\$15,000,000	AGGREGATE	\$15,000,000								
EACH OCCURRENCE	\$15,000,000																		
AGGREGATE	\$15,000,000																		
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	6080688820 WC (AOS) 6080688834 WC (CA)	06/09/2024 06/09/2024	06/09/2025 06/09/2025	<table><tr><td><input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$1,000,000</td></tr><tr><td>E.L. DISEASE-EA EMPLOYEE</td><td>\$1,000,000</td></tr><tr><td>E.L. DISEASE-POLICY LIMIT</td><td>\$1,000,000</td></tr></table>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER		E.L. EACH ACCIDENT	\$1,000,000	E.L. DISEASE-EA EMPLOYEE	\$1,000,000	E.L. DISEASE-POLICY LIMIT	\$1,000,000				
<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER																			
E.L. EACH ACCIDENT	\$1,000,000																		
E.L. DISEASE-EA EMPLOYEE	\$1,000,000																		
E.L. DISEASE-POLICY LIMIT	\$1,000,000																		
D	<input checked="" type="checkbox"/> Cyber Liability			FSCE02403512 Tech E&O / Prof Liab SIR applies per policy terms & conditions	07/09/2024	07/09/2025	<table><tr><td>Per Claim/Aggregate</td><td>\$5,000,000</td></tr><tr><td>SIR per Aggregate</td><td>\$250,000</td></tr></table>	Per Claim/Aggregate	\$5,000,000	SIR per Aggregate	\$250,000								
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Policy No. FSCE02403512 insuring agreements provide coverage on a Claims Made basis. City of Santa Fe, 200 Lincoln Ave., Santa Fe, NM 87501 is included as Additional Insured in accordance with the policy provisions of the General Liability policy.

CERTIFICATE HOLDER

City of Santa Fe
200 Lincoln Ave.
Santa Fe NM 87501 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Northeast, Inc.

Holder Identifier :

570112613881


Certificate No :



Date: October 30, 2024

To: John Blair, City Manager

From: Margaret M. Neill, Library Division Director 
Margaret Neill (Oct 31, 2024 15:28 MDT)

Via: Maria Sanchez Tucker, Community Services Director 
Maria Tucker (Nov 3, 2024 07:33 MST)

Subject: Request for Approval of Contract for Purchase of Digital Content

Vendor Name: Kanopy

Munis Vendor Number: 8594

ITEM AND ISSUE:

Community Services/Library Division respectfully requests your review and approval of a contract in the total amount of \$50,000.00 for the purchase of digital streaming media. Purchase of library materials in either digital or print form is exempt per NMSA 13-1-98-E(2013).

2510101.530700 (GO Bond): \$50,000.00

CONTRACT NUMBER:

3250286

BACKGROUND AND SUMMARY:

Santa Fe Public Library provides access to a variety of informational and entertainment materials in multiple formats as part of its mission to provide access to information. Kanopy offers streaming media services to public libraries.

Prior Approvals and Supporting Information:

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-98, Exempt

Per NMSA 1978, Section 13-1-98 (E) purchases of physical or digital library books and materials are exempt.

Chief Procurement Officer (CPO) / Designee: _____ Date: _____

CPO Comment/Exceptions: _____

FUNDING SOURCE:

Fund Name/Number: Library Fund/251

Munis Org Name/Number: Library Programs/2510101

Munis Object Name/Number: Books/Subscripts/Periodicals/530700

Budget Officer / Designee: _____ Date: _____

Budget Officer Comment/Exceptions: _____

ASSOCIATED APPROVALS:

Does this purchase require any of the following associated approvals: ☐ Yes | ☐ No
(ITT, Vehicles/Fleet, Facilities, Asset, Grant Review)

IT Components included? ☐ Yes | ☐ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☐ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☐ Yes | ☒ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Capital Asset* or Project** ☐ Yes | ☒ No

Project Ledger #: _____

(*will this procurement result in a tangible item that costs more than \$5,000?)

(**Capital Projects are new and improvement projects that are going to cost \$10,000 or more)

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____


Is this a Grant Funded Purchase? ☒ Yes | ☐ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

ATTACHMENTS:

Procurement Document: Exemption Determination/Email

Vendor's Quote 

Software Contract 

Professional/General Service Contract

Vendor Quote

Certificate of Liability

Horizons declination

CPO Service Determination Email

GO Bond Bar Packet

Approved

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<https://santafenm.gov/finance-2/purchasing-1>

Internal Link: https://intranet.santafenm.gov/finance_1



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Thank you for your time and attention to this request.

Margaret M. Neill (*she/her/hers*)
Library Division Director
City of Santa Fe
Office: (505) 955-6788 / Cell: (505) 479-1646

7/15/24, 5:20 PM

Mail - ORTELLI, KRISTEN N. - Outlook

145 Washington Ave. Santa Fe, NM 87501

mmneill@santafenm.gov



Santa Fe Public Library

Community Services Department, City of Santa Fe, New Mexico

Transcribed by Jerry R. Hines

underscored material = new
[bracketed material] = delete

HOUSE BILL 430

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Linda M. Trujillo

AN ACT

RELATING TO PROCUREMENT; PROVIDING EXEMPTIONS FROM THE
PROCUREMENT CODE FOR CERTAIN LIBRARY, PUBLISHING AND
DISTRIBUTION PURCHASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-1-98 NMSA 1978 (being Laws 1984,
Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal
property or services by a state agency or a local public body
from a state agency, a local public body or external
procurement unit except as otherwise provided in Sections
13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or

.212549.1SA

underscored material = new
[bracketed material] = delete

1 services for the governor's mansion and grounds;

2 C. printing and duplicating contracts involving
3 materials that are required to be filed in connection with
4 proceedings before administrative agencies or state or federal
5 courts;

6 D. purchases of publicly provided or publicly
7 regulated gas, electricity, water, sewer and refuse collection
8 services;

9 E. purchases of books, periodicals and training
10 materials in printed or electronic format from the publishers
11 or copyright holders thereof and purchases of print, digital or
12 electronic format library materials by public, school and state
13 libraries for access by the public;

14 F. travel or shipping by common carrier or by
15 private conveyance or to meals and lodging;

16 G. purchase of livestock at auction rings or to the
17 procurement of animals to be used for research and
18 experimentation or exhibit;

19 H. contracts with businesses for public school
20 transportation services;

21 I. procurement of tangible personal property or
22 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
23 ~~by the corrections industries division of the corrections~~
24 department pursuant to rules adopted by the corrections
25 industries commission, which shall be reviewed by the

.212549.1SA



Kanopy Inc. Quote

Quote Date: 08/01/2024

Quote Number: KCAP-01012024

Billing Address: Santa Fe Public Library
145 Washington Ave
Santa Fe, NM 87501

Order Summary:

This Invoice is entered into between Institution and Kanopy pursuant to the current Master Agreement between them. Any capitalized term not defined herein shall have the meaning ascribed to it in the Master Agreement. By issuing payment hereunder or accessing or using the Offerings identified herein, Institution agrees to be bound by this Invoice.

Offering	Total (USD)
	\$50,000.00

Pay Per Use (PPU) Program

- Budget allocation: \$50,000.00 (September 28, 2024 – September 27, 2025)

Pay Per Use (PPU) Program

- Access:** Kanopy will provide Institution and its End Users with access to Kanopy's film database. Institution may adapt its content and collection selections at any time.
- Caps:** Institution may impose monthly user caps on users (with respect to the number of film "Play Tickets" an End User may incur in a given month) and change these at any time with written notice to Kanopy. Institution may also set in place program spend caps and change these at any time.
- Definition:** As used herein, one or more "Play Tickets" are incurred on a Title when an End User accesses the Title and seeks to employ the Title for use. Once user Play Tickets have been logged, depending on the Title selected, the User will have either 3 full days (72 hours) or 2 full days (48 hours) to watch the film for unlimited uses. Once user Play Tickets have been logged in the context of episodic Titles, the User will have between three and twenty-one days to watch a season of the Episodic Title for unlimited use. Kanopy Kids provides 30 days of unlimited use for the entirety of Kanopy Kids. A user can track their existing and past Play Tickets from their user dashboard.

- **Cost per Ticket:** A maximum cost of \$1 per User Play Ticket. A maximum cost of \$5 per play for Kanopy Kids. Processing: Invoices for Play Tickets will be processed periodically for the Institution (monthly). Institution will be notified and sent an invoice. Institution may request early processing of Play Ticket invoices at any time.
- **Reports:** Institution can monitor usage and budget live from their admin dashboard.
- **Budgeting:** Pre-Payment Required for capped program. Within sixty (60) days of the Effective Date of this Agreement, the Institution will pay Kanopy \$50,000.00 for the rights granted in the Order Form during the twelve (12) month period beginning on September 28, 2024 and ending on September 27, 2025. (The "Twelve-Month Fee"). During the aforementioned twelve (12) month period, Institution shall have no additional payment obligations to Kanopy beyond the Twelve-Month Fee. Kanopy and Institution shall negotiate new payment terms for the rights granted in the Order Form within the sixty (60) days prior to November 27, 2024. If, at the end of the initial Twelve (12) month period, end-user engagement generates less in fees than the Twelve-Month Fee, the difference between the Twelve-Month Fee and the fees generated by end-user engagement shall be credited to the next year's negotiated Twelve Month Fee. If Kanopy determines that Institution and its End User's usage of the service is tracking above the guaranteed cap, Kanopy will notify Institution of this determination, and the Institution will work with Kanopy to apply additional levers to manage and limit usage of the Service.

Subtotal: \$50,000.00

Total Amount Due: \$50,000.00

Kanopy, One OverDrive Way, Cleveland, OH 44125 USA
 Kanopy Inc., EIN 99-0377373
www.kanopy.com



MASTER AGREEMENT

Institution Name:	Santa Fe Public Library	Institution Contact:	
Address:	145 Washington Avenue Santa Fe, NM 87501	Phone:	
		Email:	

This **Master Agreement** is made and entered into as of the Effective Date set forth below by and between **Kanopy INC**, a Delaware limited liability company with a place of business One OverDrive Way, Cleveland, OH 44125 ("Kanopy"), and the institution identified above ("Institution").

Overview

Kanopy streams and makes available digital video content, including associated audio, graphics, text, images and other data and content, to universities, colleges, schools, public libraries, corporations and other institutions for access and use pursuant to applicable access and license terms. As permitted by an order between Kanopy and an institution, Kanopy may also host and stream digital video content uploaded by the institution where such institution holds all necessary rights and permissions to enable Kanopy to host and stream such content. Kanopy streams and makes digital video content available through various platforms, including its website at www.kanopy.com, the Kanopy iOS and Android mobile apps, the Kanopy channel on Roku, and other modes of access that are available now or may become available in the future.

Structure of Agreement and Order of Precedence

Kanopy and Institution may enter into one or more order forms under this Agreement (as defined below) for access to and use of digital content hosted or streamed by Kanopy. As appropriate, each order form will specify the title(s), product(s), fees, period or term of access, and any special usage rights and/or restrictions and other terms relevant to the order. Each such order form will be governed by the terms and conditions of this Agreement.

This Master Agreement consists of: (a) the attached Terms and Conditions; (b) any order forms entered into hereunder between Kanopy and Institution; and (c) this signature page (collectively, the "Agreement"). In the event of any conflict between or among the various components of this Agreement, the terms and conditions of each component shall take precedence in the order listed above; provided, however, that any conflict with respect to restrictions on access to or use of materials provided by Kanopy shall be resolved in the manner that gives broadest effect to such restrictions.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed as of the Effective Date by its duly authorized representative.

KANOPY INC

By: Jason Tyrrell
Jason Tyrrell (Oct 29, 2024 15:01 PDT)

Name: Jason Tyrrell

Title: General Manager

INSTITUTION

By: _____

Name: _____

Title: _____

Effective Date: _____



TERMS AND CONDITIONS

1. Definitions

(a) "Access Term" means the period of time set forth in each Order Form during which the Offerings or, as applicable, Institution Content covered by such Order Form will be hosted and streamed by Kanopy pursuant to this Agreement.

(b) "Credentials" means any user accounts, passwords and other authentication credentials associated with access to or use of the Service by Institution or End Users.

(c) "End User" means: (i) any student, teacher, professor, patron, employee or staff member affiliated with Institution; (ii) any authorized visitor physically present at the facilities of Institution; and (iii) with respect to any Institution that is a library established for use by the general public and maintained primarily through public funds, any individual who is a member of such Institution.

(d) "Institution Content" means any content provided by Institution pursuant to this Agreement for hosting and streaming by Kanopy.

(e) "Institution Facilities" means Credentials and any account, hardware, system or other facility within Institution's custody or control.

(f) "Offering" means any Product or Title.

(g) "Order Form" means an order form, invoice or other ordering document entered into between the parties pursuant to this Agreement specifying the Offerings, Institution Content, fees and payment terms, special usage rights and restrictions and other terms relevant to the order.

(h) "Product" means each product identified in an Order Form that Kanopy will make accessible to Institution pursuant to this Agreement, including: (i) any package or collection of titles or other content made accessible to Institution via subscription, patron-driven acquisition (PDA), pay-per-use (PPU) or other such models; and (ii) any other product that Kanopy may offer.

(i) "Service" means the service through which Kanopy hosts and makes accessible Offerings and, as applicable, Institution Content.

(j) "Territory" means the geographical area designated as the Territory in an Order Form or, if no such area is designated in an Order Form, the country in which Institution is domiciled.

(k) "Title" means each film, video or other content (excluding Institution Content) identified in an Order Form that Kanopy will make accessible to Institution pursuant to this Agreement.

2. Grant of Rights and Restrictions

(a) Grant of Rights. During the applicable Access Term and subject to Institution's compliance in all material respects with the terms and conditions of this Agreement, Kanopy hereby grants Institution a limited, non-exclusive, non-sublicensable right and license to allow End Users within the designated Territory to view Offerings and, as applicable, Institution Content in real-time within the Service.

(b) Restrictions. All rights granted under this Agreement may only be exercised for non-commercial personal or educational use. Institution shall not: (i) use, archive, capture, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights to the Service or any Offering, except as expressly permitted under this Agreement; (ii) translate or reverse engineer, decompile, decode or otherwise attempt to derive the source code, architectural framework or data records of any software within or associated with the Service; (iii) frame or utilize any framing technique to enclose any content within the Service; (iv) access the Service for the purpose of benchmarking or developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Service or any products or services offered by Kanopy; (v) rent, lease, lend or sell

the Service, or otherwise provide access to the Service as part of a service bureau or similar fee-for-service purpose; (vi) make the Service or any Offering accessible to anyone who is not an End User; (vii) remove or obscure any proprietary notice that appears within the Service or any Offering; or (viii) use the Service in any way that does not comply in all material respect with the terms and conditions of this Agreement and all applicable laws and regulations.

(c) Policies. In addition to the terms and conditions of this Agreement, access to and use of the Service shall comply with and be subject to any terms of service, acceptable use policy, privacy policy, end user license agreement and other guidelines instituted by Kanopy or its licensors or service providers.

(d) Technical Requirements. Institution and End Users shall be solely responsible for obtaining, configuring and maintaining any hardware, network connectivity and third-party software required to access the Service, including computers, operating systems, web browsers and storage devices.

(e) Protection. Institution shall be solely responsible for protecting the confidentiality of Credentials and all activities undertaken using Institution Facilities. In the event that Institution becomes aware of any unauthorized use of the Service through Institution Facilities, Institution shall promptly give written notice to Kanopy of such unauthorized use and make reasonable efforts to eliminate such unauthorized use. Institution shall implement and maintain appropriate security policies and procedures and access control methodologies to safeguard access to the Service through Institution Facilities and to limit access to the Service to End Users.

3. Institution Content

(a) Grant of Rights. As specified in an applicable Order Form, Institution may upload Institution Content to the Service for hosting and streaming by Kanopy pursuant to this Agreement. During the applicable Access Term, Institution hereby grants Kanopy a limited, non-exclusive, non-sublicensable, royalty-free right and license to host, stream, exhibit, transmit, reproduce, publicly perform, publicly display and project Institution Content as necessary to make Institution Content available for viewing by End Users within the Service.

(b) Assurances. Institution represents and warrants that: (i) it holds all necessary rights (including all intellectual property rights) and permissions to grant the rights under this Section 3 to Kanopy; and (ii) Institution Content does not violate any applicable laws or any rights of another party, including any laws relating to defamation or indecency and any intellectual property or right of privacy or publicity.

(c) Institution Ownership. Kanopy acknowledges and agrees that, as between Institution and Kanopy, Institution (or its licensors) owns all rights, title and interest (including all intellectual property) in and to Institution Content.

4. Fees and Taxes

(a) Fees. Within sixty (60) days of the Effective Date of this Agreement, Institution will pay Kanopy \$50,000 for the rights granted in the Order Form during the twelve (12) month period beginning on 9/28/2024 and ending on 9/27/2025 (The "Twelve-Month Fee"). During the aforementioned twelve (12) month period, Institution shall have no additional payment obligations to Kanopy beyond the Twelve-Month Fee. Kanopy and Institution shall negotiate new payment terms for the rights granted in the Order Form within the sixty (60) days prior to 9/27/2025. If, at the end of the initial twelve (12) month period, end-user engagement generates less in fees than the Twelve-Month Fee, the difference between the Twelve-Month Fee and the fees generated by end-user engagement shall be credited to the next year's negotiated Twelve-Month Fee. If Kanopy determines that Institution and its End User's usage of the service is tracking above the guaranteed cap, Kanopy will notify Institution of this determination, and the Institution will work

with Kanopy to apply additional levers to manage and limit usage of the Service

(b) Taxes. Any and all amounts payable hereunder by Institution are exclusive of any sales, use, value-added, excise or other similar taxes (collectively, “Taxes”). Institution shall be solely responsible for paying all applicable Taxes. If Kanopy has the legal obligation to collect any Taxes, Institution shall reimburse Kanopy upon invoice by Kanopy. If Institution is required by law to withhold any taxes from its payments to Kanopy, Institution shall provide Kanopy with an official tax receipt or other appropriate documentation to support such payments and take reasonable steps to minimize such payments.

5. Intellectual Property

(a) Kanopy Ownership. Institution acknowledges and agrees that, as between Kanopy and Institution, Kanopy (or its licensors) owns all rights, title and interest (including all intellectual property) in and to the Service and Offerings. Kanopy reserves all rights not expressly granted under this Agreement.

(b) Suggestions. If Institution elects to provide or make available to Kanopy any suggestions, comments, ideas, improvements or other feedback relating to the Service or Offerings (“Suggestions”), Kanopy shall be free to use, disclose, reproduce, have made, modify, license, transfer and otherwise utilize and distribute Suggestions in any manner, without credit or compensation to Institution.

6. Term and Termination

(a) Term. The term for this Agreement shall commence on 9/28/2024 and continue in effect until 9/27/2025.

(b) Suspension. Kanopy reserves the right to suspend Institution’s and any End User’s access to and use of the Service and Offerings in the event of any: (i) actual or reasonably suspected breach of Section 2 by Institution or any End User; provided, however, that Kanopy, where applicable, will use commercially reasonable efforts to limit suspension to each End User in breach of Section 2 or 3(b) and restore access upon elimination of the relevant breach; or (ii) failure by Institution to make any payment when due under this Agreement; provided, however, that Kanopy will restore access upon Institution’s payment of all outstanding fees.

(c) Termination. Notwithstanding anything to the contrary, this Agreement may be terminated as follows: (i) upon a material breach of this Agreement by a party, which breach is not cured within thirty (30) days after receipt of written notice from the other party; or (ii) by either party in the event the other party becomes insolvent or bankrupt; becomes the subject of any proceedings under bankruptcy, insolvency or debtor’s relief law; has a receiver or manager appointed; makes an assignment for the benefit of creditors; or takes the benefit of any applicable law or statute in force for the winding up or liquidation of such party’s business. For the avoidance of doubt, Institution shall not terminate this agreement prior to the end of the Term for any purpose other than those established as permissible in this Clause 6(c).

(d) Survival. Any provision that, by its terms, is intended to survive the expiration or termination of this Agreement shall survive such expiration or termination, including Sections: 3(b)(Assurances); 4 (Fees and Taxes); 5 (Intellectual Property); 6(d) (Survival); 7 (Representations and Warranties); 8 (Indemnification); 9 (Disclaimer of Warranties); 10 (Limitation of Liability); and 11 (Miscellaneous).

7. Representations and Warranties

Kanopy and Institution each represents and warrants to the other that: (a) it has the necessary power and authority to enter into this Agreement; (b) the execution and performance of this Agreement have been authorized by all necessary corporate or institutional action; (c) entry into and performance of this Agreement will not conflict with any provision of law or the certificate of incorporation, bylaws or comparable organizational documents of such party; (d) no action by any governmental entity is necessary to make this Agreement valid and

binding upon such party; and (e) it possesses all governmental licenses and approvals necessary to perform its obligations under this Agreement.

8. DISCLAIMER OF WARRANTIES

THE SERVICE, OFFERINGS AND ALL OTHER MATERIALS PROVIDED BY KANOPY UNDER THIS AGREEMENT (COLLECTIVELY, “KANOPY MATERIALS”) ARE PROVIDED “AS IS,” “AS AVAILABLE” AND “WITH ALL FAULTS.” KANOPY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS (EXCEPT AS SET FORTH IN SECTION 7), EXPRESS OR IMPLIED, INCLUDING: (A) THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (B) ANY WARRANTY WITH RESPECT TO THE QUALITY, ACCURACY, CURRENCY OR COMPLETENESS OF THE KANOPY MATERIALS, OR THAT USE OF THE KANOPY MATERIALS WILL BE ERROR-FREE, UNINTERRUPTED, FREE FROM OTHER FAILURES OR WILL MEET INSTITUTION’S OR END USERS’ REQUIREMENTS.

9. LIMITATION OF LIABILITY

(A) IN NO EVENT SHALL KANOPY OR ITS AFFILIATES AND LICENSORS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS OR COST OF COVER, ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS OCCASIONED BY OR RESULTING FROM ANY ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE KANOPY MATERIALS, SUCH AS ANY MALFUNCTION, DEFECT OR FAILURE OF ANY KANOPY MATERIALS, EVEN IF KANOPY HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE; AND (B) IN NO EVENT SHALL KANOPY’S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES RECEIVED BY KANOPY FROM INSTITUTION UNDER THIS AGREEMENT IN THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENTS GIVING RISE TO LIABILITY AROSE.

10. Miscellaneous

(a) Independent Contractors. The relationship between Kanopy and Institution established by this Agreement is solely that of independent contractors. Neither party is in any way the partner or agent of the other, nor is either party authorized or empowered to create or assume any obligation of any kind, implied or expressed, on behalf of the other party, without the express prior written consent of such other party.

(b) Notice. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and sent to the parties as follows: (i) if to Kanopy, at the address set forth for Kanopy in the signature page herein, Attn: Legal Department, or, if different, in the most recent Order Form; (ii) if to Institution, at the address set forth for Institution in the signature page herein or, if different, in the most recent Order Form.

(c) Assignment. Institution may not assign this Agreement, or assign or delegate any right or obligation hereunder, by operation of law or otherwise without the prior written consent of Kanopy. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) No Third-Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective successors and permitted assigns.

(e) Interpretation. For the purposes of this Agreement: (i) the words “such as,” “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation;” (ii) the word “or” is not exclusive; and (iii) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(f) Entire Agreement. This Agreement and the attached addendum contain the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous or contemporaneous oral or written negotiations or agreements with respect to such subject matter.

(g) Amendment. This Agreement may not be amended except in a writing executed by an authorized representative of each party.

(h) Severability. If any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed and enforced, without regard to conflict of laws principles, in accordance with: (i) if Institution is domiciled in the United States or Canada, the laws of the state or province in which Institution is domiciled; or (ii) if Institution is domiciled outside the United States and Canada, the laws of the country in which Institution is domiciled. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

(j) No Waiver. The failure of either party to require strict performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Any waiver of the provisions of this Agreement, or of any breach or default hereunder, must be set forth in a written instrument signed by the party against which such waiver is to be enforced.

(k) U.S. Government Entities. This section applies to access to or use of the Service by a branch or agency of the United States Government ("U.S. Government"). The Service includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualifies as "commercial items" as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The U.S. Government shall acquire only those rights set forth in this Agreement with respect to the such items, and any access to or use of the Service by the U.S. Government constitutes: (1) agreement by the U.S. Government that that such items are "commercial computer software" and "commercial computer software documentation" as defined in this section; and (2) acceptance of the rights and obligations herein.

(l) Force Majeure. Except with respect to payment obligations under Section 4, neither party shall be liable for any failure to perform under this Agreement to the extent due to any act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction of production facilities, insurrection or any other cause beyond the reasonable control of the party invoking this provision.

(m) Confidentiality. Each party acknowledges and agrees that it shall treat the terms and conditions of this Agreement, including any pricing information, as confidential information and not disclose such information to any third party except to the extent required by applicable law. For the avoidance of doubt, the parties acknowledge and agree that Kanopy may identify Customer as a Kanopy customer, and Customer may identify Kanopy as a provider of content to Customer.

(n) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

City of Santa Fe ADDENDUM

This agreement incorporates the additional terms and conditions in the addendum between Kanopy (Contractor) and the CITY OF SANTA FE (City).

TERMINATION

This Agreement may be terminated by City upon 30 days written notice to the CONTRACTOR.

INDEMNIFICATION

CONTRACTOR shall indemnify, hold harmless and defend CITY from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from CONTRACTOR's performance under this Agreement as well as the performance of CONTRACTOR's employees, agents, representatives and subcontractor. Provided, however, that CONTRACTOR shall have no such indemnification obligation if the suit, judgement, execution, claim, action or demand arises in any way from CITY's use of CONTRACTOR's platform, or the content contained thereon, in a manner that breaches the Master Agreement entered into between the PARTIES.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by CITY in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. CITY and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

APPLICABLE LAW; CHOICE OF LAW; VENUE

CONTRACTOR shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of CITY of Santa Fe. In any action, suit or legal dispute arising from this Agreement, CONTRACTOR agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement

shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by CITY for the performance of this Agreement. If sufficient appropriations and authorization are not made by CITY, this Agreement shall terminate upon written notice being given by CITY to CONTRACTOR. The CITY's decision as to whether sufficient appropriations are available shall be accepted by CONTRACTOR and shall be final. CONTRACTOR agrees not to purport to bind CITY to any obligation not assumed herein by CITY unless CONTRACTOR has express written authority to do so, and then only within the strict limits of that authority.

INSURANCE

CONTRACTOR shall maintain general liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. CONTRACTOR shall furnish CITY with proof of insurance of CONTRACTOR's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than CITY and CONTRACTOR. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.


SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

Date: October 30, 2024

To: John Blair, City Manager

From: Margaret M. Neill, Library Division Director 
Margaret Neill (Oct 31, 2024 15:28 MDT)

Via: Maria Sanchez Tucker, Community Services Director 
Maria Tucker (Nov 3, 2024 07:33 MST)

Subject: Request for Approval of Contract for Purchase of Digital Content

Vendor Name: Kanopy

Munis Vendor Number: 8594

ITEM AND ISSUE:

Community Services/Library Division respectfully requests your review and approval of a contract in the total amount of \$50,000.00 for the purchase of digital streaming media. Purchase of library materials in either digital or print form is exempt per NMSA 13-1-98-E(2013).

2510101.530700 (GO Bond): \$50,000.00

CONTRACT NUMBER:

3250286

BACKGROUND AND SUMMARY:

Santa Fe Public Library provides access to a variety of informational and entertainment materials in multiple formats as part of its mission to provide access to information. Kanopy offers streaming media services to public libraries.

Prior Approvals and Supporting Information:

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-98, Exempt

Per NMSA 1978, Section 13-1-98 (E) purchases of physical or digital library books and materials are exempt.

Chief Procurement Officer (CPO) / Designee: _____ Date: _____

CPO Comment/Exceptions: _____

FUNDING SOURCE:

Fund Name/Number: Library Fund/251

Munis Org Name/Number: Library Programs/2510101

Munis Object Name/Number: Books/Subscripts/Periodicals/530700

Budget Officer / Designee: _____ Date: _____

Budget Officer Comment/Exceptions: _____

ASSOCIATED APPROVALS:

Does this purchase require any of the following associated approvals: ☐ Yes | ☐ No
(ITT, Vehicles/Fleet, Facilities, Asset, Grant Review)

IT Components included? ☐ Yes | ☐ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☐ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☐ Yes | ☒ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Capital Asset* or Project** ☐ Yes | ☒ No

Project Ledger #: _____

(*will this procurement result in a tangible item that costs more than \$5,000?)

(**Capital Projects are new and improvement projects that are going to cost \$10,000 or more)

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____


Is this a Grant Funded Purchase? ☐ Yes | ☒ No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

ATTACHMENTS:

Procurement Document: Exemption Determination/Email

Vendor's Quote 

Software Contract 

Professional/General Service Contract

Vendor Quote

Certificate of Liability

Horizons declination

CPO Service Determination Email

GO Bond Bar Packet

Approved

These services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities and are available through Horizons of New Mexico.

Please note that the Council is in the process of reviewing and adding services that are suitable for State Use and services may be added or removed from this list in the future.

-
- ADA Accessibility Consulting Services
 - Auctioneering Services
 - Bulk Mailing and Sorting
 - Botanical Services
 - Call Center Services
 - Car Washing
 - Clerical Data Entry
 - Computer Refurbishing
 - Courier Services
 - Debris Removal
 - Decontamination, Sanitation and Sterilization Services
 - Dishwashing Services
 - Document Imaging
 - Document Shredding
 - Envelope Stuffing
 - Event Planning
 - General Labor
 - Greeting Services
 - Hard Drive Destruction
 - Janitorial and Housekeeping Services - Including COVID-19 Disinfecting and other Disinfecting Services
 - Kit Assembling
 - Landscape Irrigation
 - Landscaping

- Lobby Attendant
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Medical Waste Disposal
- Meeting Minute Preparation Services
- Moving Services
- Pest Control and Extermination Services
- Plant Rental Services
- Printing Services
- Receptionist, Filing and Clerical Services
- Recycling Services
- Rest Area Maintenance
- Screen Printing
- Shelf Stocking and Restocking
- Snow Removal
- Transcription Services
- Transportation
- Wildlife Services Management
- Yard, Grounds, and Lawn Maintenance

From: DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>
Sent: Monday, July 15, 2024 1:55 PM
To: NEILL, MARGARET M. <mmneill@santafenm.gov>
Subject: RE: Purchasing Exemption-Kanopy

Hi, this is exempt per NMSA 1978, Section 13-1-98 (E).

Thank you.

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

<https://santafenm.gov/finance-2/purchasing-1>

Internal Link: https://intranet.santafenm.gov/finance_1



From: NEILL, MARGARET M. <mmneill@santafenm.gov>
Sent: Monday, July 15, 2024 12:44 PM
To: DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>
Subject: Purchasing Exemption-Kanopy

Hi Travis,

I am requesting a purchasing exemption for Kanopy, which is one of our vendors for digital media-streaming movies, documentaries, educational programs, television shows, etc.

We have not yet allocated funds for FY25, but the estimate for Kanopy is \$50,000.00 using a mix of state funding and general fund money.

I am requesting to use NM Stat § 13-1-98 -E (2023): purchases of books, periodicals, instructional materials and training materials in printed, digital or electronic format from the publishers, designated public-education-department-approved instructional material depositories or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;

Thank you for your time and attention to this request.

Margaret M. Neill (*she/her/hers*)
Library Division Director
City of Santa Fe
Office: (505) 955-6788 / Cell: (505) 479-1646

7/15/24, 5:20 PM

Mail - ORTELLI, KRISTEN N. - Outlook

145 Washington Ave. Santa Fe, NM 87501

mmneill@santafenm.gov



Santa Fe Public Library

Community Services Department, City of Santa Fe, New Mexico

Transcribed by Jerry Rios

underscored material = new
[bracketed material] = delete

HOUSE BILL 430

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Linda M. Trujillo

AN ACT

RELATING TO PROCUREMENT; PROVIDING EXEMPTIONS FROM THE
PROCUREMENT CODE FOR CERTAIN LIBRARY, PUBLISHING AND
DISTRIBUTION PURCHASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-1-98 NMSA 1978 (being Laws 1984,
Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal
property or services by a state agency or a local public body
from a state agency, a local public body or external
procurement unit except as otherwise provided in Sections
13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or

.212549.1SA

underscored material = new
[bracketed material] = delete

1 services for the governor's mansion and grounds;

2 C. printing and duplicating contracts involving
3 materials that are required to be filed in connection with
4 proceedings before administrative agencies or state or federal
5 courts;

6 D. purchases of publicly provided or publicly
7 regulated gas, electricity, water, sewer and refuse collection
8 services;

9 E. purchases of books, periodicals and training
10 materials in printed or electronic format from the publishers
11 or copyright holders thereof and purchases of print, digital or
12 electronic format library materials by public, school and state
13 libraries for access by the public;

14 F. travel or shipping by common carrier or by
15 private conveyance or to meals and lodging;

16 G. purchase of livestock at auction rings or to the
17 procurement of animals to be used for research and
18 experimentation or exhibit;

19 H. contracts with businesses for public school
20 transportation services;

21 I. procurement of tangible personal property or
22 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
23 ~~by the corrections industries division of the corrections~~
24 department pursuant to rules adopted by the corrections
25 industries commission, which shall be reviewed by the

.212549.1SA



Kanopy Inc. Quote

Quote Date: 08/01/2024

Quote Number: KCAP-01012024

Billing Address: Santa Fe Public Library
145 Washington Ave
Santa Fe, NM 87501

Order Summary:

This Invoice is entered into between Institution and Kanopy pursuant to the current Master Agreement between them. Any capitalized term not defined herein shall have the meaning ascribed to it in the Master Agreement. By issuing payment hereunder or accessing or using the Offerings identified herein, Institution agrees to be bound by this Invoice.

Offering	Total (USD)
	\$50,000.00

Pay Per Use (PPU) Program

- Budget allocation: \$50,000.00 (September 28, 2024 – September 27, 2025)

Pay Per Use (PPU) Program

- Access:** Kanopy will provide Institution and its End Users with access to Kanopy's film database. Institution may adapt its content and collection selections at any time.
- Caps:** Institution may impose monthly user caps on users (with respect to the number of film "Play Tickets" an End User may incur in a given month) and change these at any time with written notice to Kanopy. Institution may also set in place program spend caps and change these at any time.
- Definition:** As used herein, one or more "Play Tickets" are incurred on a Title when an End User accesses the Title and seeks to employ the Title for use. Once user Play Tickets have been logged, depending on the Title selected, the User will have either 3 full days (72 hours) or 2 full days (48 hours) to watch the film for unlimited uses. Once user Play Tickets have been logged in the context of episodic Titles, the User will have between three and twenty-one days to watch a season of the Episodic Title for unlimited use. Kanopy Kids provides 30 days of unlimited use for the entirety of Kanopy Kids. A user can track their existing and past Play Tickets from their user dashboard.

- **Cost per Ticket:** A maximum cost of \$1 per User Play Ticket. A maximum cost of \$5 per play for Kanopy Kids. Processing: Invoices for Play Tickets will be processed periodically for the Institution (monthly). Institution will be notified and sent an invoice. Institution may request early processing of Play Ticket invoices at any time.
- **Reports:** Institution can monitor usage and budget live from their admin dashboard.
- **Budgeting:** Pre-Payment Required for capped program. Within sixty (60) days of the Effective Date of this Agreement, the Institution will pay Kanopy \$50,000.00 for the rights granted in the Order Form during the twelve (12) month period beginning on September 28, 2024 and ending on September 27, 2025. (The "Twelve-Month Fee"). During the aforementioned twelve (12) month period, Institution shall have no additional payment obligations to Kanopy beyond the Twelve-Month Fee. Kanopy and Institution shall negotiate new payment terms for the rights granted in the Order Form within the sixty (60) days prior to November 27, 2024. If, at the end of the initial Twelve (12) month period, end-user engagement generates less in fees than the Twelve-Month Fee, the difference between the Twelve-Month Fee and the fees generated by end-user engagement shall be credited to the next year's negotiated Twelve Month Fee. If Kanopy determines that Institution and its End User's usage of the service is tracking above the guaranteed cap, Kanopy will notify Institution of this determination, and the Institution will work with Kanopy to apply additional levers to manage and limit usage of the Service.

Subtotal: \$50,000.00

Total Amount Due: \$50,000.00

Kanopy, One OverDrive Way, Cleveland, OH 44125 USA
 Kanopy Inc., EIN 99-0377373
www.kanopy.com



MASTER AGREEMENT

Institution Name:	Santa Fe Public Library	Institution Contact:	
Address:	145 Washington Avenue Santa Fe, NM 87501	Phone:	
		Email:	

This **Master Agreement** is made and entered into as of the Effective Date set forth below by and between **Kanopy INC**, a Delaware limited liability company with a place of business One OverDrive Way, Cleveland, OH 44125 ("Kanopy"), and the institution identified above ("Institution").

Overview

Kanopy streams and makes available digital video content, including associated audio, graphics, text, images and other data and content, to universities, colleges, schools, public libraries, corporations and other institutions for access and use pursuant to applicable access and license terms. As permitted by an order between Kanopy and an institution, Kanopy may also host and stream digital video content uploaded by the institution where such institution holds all necessary rights and permissions to enable Kanopy to host and stream such content. Kanopy streams and makes digital video content available through various platforms, including its website at www.kanopy.com, the Kanopy iOS and Android mobile apps, the Kanopy channel on Roku, and other modes of access that are available now or may become available in the future.

Structure of Agreement and Order of Precedence

Kanopy and Institution may enter into one or more order forms under this Agreement (as defined below) for access to and use of digital content hosted or streamed by Kanopy. As appropriate, each order form will specify the title(s), product(s), fees, period or term of access, and any special usage rights and/or restrictions and other terms relevant to the order. Each such order form will be governed by the terms and conditions of this Agreement.

This Master Agreement consists of: (a) the attached Terms and Conditions; (b) any order forms entered into hereunder between Kanopy and Institution; and (c) this signature page (collectively, the "Agreement"). In the event of any conflict between or among the various components of this Agreement, the terms and conditions of each component shall take precedence in the order listed above; provided, however, that any conflict with respect to restrictions on access to or use of materials provided by Kanopy shall be resolved in the manner that gives broadest effect to such restrictions.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed as of the Effective Date by its duly authorized representative.

KANOPY INC

By: Jason Tyrrell
Jason Tyrrell (Oct 29, 2024 15:01 PDT)

Name: Jason Tyrrell

Title: General Manager

INSTITUTION

By: _____

Name: _____

Title: _____

Effective Date: _____



TERMS AND CONDITIONS

1. Definitions

(a) "Access Term" means the period of time set forth in each Order Form during which the Offerings or, as applicable, Institution Content covered by such Order Form will be hosted and streamed by Kanopy pursuant to this Agreement.

(b) "Credentials" means any user accounts, passwords and other authentication credentials associated with access to or use of the Service by Institution or End Users.

(c) "End User" means: (i) any student, teacher, professor, patron, employee or staff member affiliated with Institution; (ii) any authorized visitor physically present at the facilities of Institution; and (iii) with respect to any Institution that is a library established for use by the general public and maintained primarily through public funds, any individual who is a member of such Institution.

(d) "Institution Content" means any content provided by Institution pursuant to this Agreement for hosting and streaming by Kanopy.

(e) "Institution Facilities" means Credentials and any account, hardware, system or other facility within Institution's custody or control.

(f) "Offering" means any Product or Title.

(g) "Order Form" means an order form, invoice or other ordering document entered into between the parties pursuant to this Agreement specifying the Offerings, Institution Content, fees and payment terms, special usage rights and restrictions and other terms relevant to the order.

(h) "Product" means each product identified in an Order Form that Kanopy will make accessible to Institution pursuant to this Agreement, including: (i) any package or collection of titles or other content made accessible to Institution via subscription, patron-driven acquisition (PDA), pay-per-use (PPU) or other such models; and (ii) any other product that Kanopy may offer.

(i) "Service" means the service through which Kanopy hosts and makes accessible Offerings and, as applicable, Institution Content.

(j) "Territory" means the geographical area designated as the Territory in an Order Form or, if no such area is designated in an Order Form, the country in which Institution is domiciled.

(k) "Title" means each film, video or other content (excluding Institution Content) identified in an Order Form that Kanopy will make accessible to Institution pursuant to this Agreement.

2. Grant of Rights and Restrictions

(a) Grant of Rights. During the applicable Access Term and subject to Institution's compliance in all material respects with the terms and conditions of this Agreement, Kanopy hereby grants Institution a limited, non-exclusive, non-sublicensable right and license to allow End Users within the designated Territory to view Offerings and, as applicable, Institution Content in real-time within the Service.

(b) Restrictions. All rights granted under this Agreement may only be exercised for non-commercial personal or educational use. Institution shall not: (i) use, archive, capture, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights to the Service or any Offering, except as expressly permitted under this Agreement; (ii) translate or reverse engineer, decompile, decode or otherwise attempt to derive the source code, architectural framework or data records of any software within or associated with the Service; (iii) frame or utilize any framing technique to enclose any content within the Service; (iv) access the Service for the purpose of benchmarking or developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Service or any products or services offered by Kanopy; (v) rent, lease, lend or sell

the Service, or otherwise provide access to the Service as part of a service bureau or similar fee-for-service purpose; (vi) make the Service or any Offering accessible to anyone who is not an End User; (vii) remove or obscure any proprietary notice that appears within the Service or any Offering; or (viii) use the Service in any way that does not comply in all material respect with the terms and conditions of this Agreement and all applicable laws and regulations.

(c) Policies. In addition to the terms and conditions of this Agreement, access to and use of the Service shall comply with and be subject to any terms of service, acceptable use policy, privacy policy, end user license agreement and other guidelines instituted by Kanopy or its licensors or service providers.

(d) Technical Requirements. Institution and End Users shall be solely responsible for obtaining, configuring and maintaining any hardware, network connectivity and third-party software required to access the Service, including computers, operating systems, web browsers and storage devices.

(e) Protection. Institution shall be solely responsible for protecting the confidentiality of Credentials and all activities undertaken using Institution Facilities. In the event that Institution becomes aware of any unauthorized use of the Service through Institution Facilities, Institution shall promptly give written notice to Kanopy of such unauthorized use and make reasonable efforts to eliminate such unauthorized use. Institution shall implement and maintain appropriate security policies and procedures and access control methodologies to safeguard access to the Service through Institution Facilities and to limit access to the Service to End Users.

3. Institution Content

(a) Grant of Rights. As specified in an applicable Order Form, Institution may upload Institution Content to the Service for hosting and streaming by Kanopy pursuant to this Agreement. During the applicable Access Term, Institution hereby grants Kanopy a limited, non-exclusive, non-sublicensable, royalty-free right and license to host, stream, exhibit, transmit, reproduce, publicly perform, publicly display and project Institution Content as necessary to make Institution Content available for viewing by End Users within the Service.

(b) Assurances. Institution represents and warrants that: (i) it holds all necessary rights (including all intellectual property rights) and permissions to grant the rights under this Section 3 to Kanopy; and (ii) Institution Content does not violate any applicable laws or any rights of another party, including any laws relating to defamation or indecency and any intellectual property or right of privacy or publicity.

(c) Institution Ownership. Kanopy acknowledges and agrees that, as between Institution and Kanopy, Institution (or its licensors) owns all rights, title and interest (including all intellectual property) in and to Institution Content.

4. Fees and Taxes

(a) Fees. Within sixty (60) days of the Effective Date of this Agreement, Institution will pay Kanopy \$50,000 for the rights granted in the Order Form during the twelve (12) month period beginning on 9/28/2024 and ending on 9/27/2025 (The "Twelve-Month Fee"). During the aforementioned twelve (12) month period, Institution shall have no additional payment obligations to Kanopy beyond the Twelve-Month Fee. Kanopy and Institution shall negotiate new payment terms for the rights granted in the Order Form within the sixty (60) days prior to 9/27/2025. If, at the end of the initial twelve (12) month period, end-user engagement generates less in fees than the Twelve-Month Fee, the difference between the Twelve-Month Fee and the fees generated by end-user engagement shall be credited to the next year's negotiated Twelve-Month Fee. If Kanopy determines that Institution and its End User's usage of the service is tracking above the guaranteed cap, Kanopy will notify Institution of this determination, and the Institution will work

with Kanopy to apply additional levers to manage and limit usage of the Service

(b) Taxes. Any and all amounts payable hereunder by Institution are exclusive of any sales, use, value-added, excise or other similar taxes (collectively, "Taxes"). Institution shall be solely responsible for paying all applicable Taxes. If Kanopy has the legal obligation to collect any Taxes, Institution shall reimburse Kanopy upon invoice by Kanopy. If Institution is required by law to withhold any taxes from its payments to Kanopy, Institution shall provide Kanopy with an official tax receipt or other appropriate documentation to support such payments and take reasonable steps to minimize such payments.

5. Intellectual Property

(a) Kanopy Ownership. Institution acknowledges and agrees that, as between Kanopy and Institution, Kanopy (or its licensors) owns all rights, title and interest (including all intellectual property) in and to the Service and Offerings. Kanopy reserves all rights not expressly granted under this Agreement.

(b) Suggestions. If Institution elects to provide or make available to Kanopy any suggestions, comments, ideas, improvements or other feedback relating to the Service or Offerings ("Suggestions"), Kanopy shall be free to use, disclose, reproduce, have made, modify, license, transfer and otherwise utilize and distribute Suggestions in any manner, without credit or compensation to Institution.

6. Term and Termination

(a) Term. The term for this Agreement shall commence on 9/28/2024 and continue in effect until 9/27/2025.

(b) Suspension. Kanopy reserves the right to suspend Institution's and any End User's access to and use of the Service and Offerings in the event of any: (i) actual or reasonably suspected breach of Section 2 by Institution or any End User; provided, however, that Kanopy, where applicable, will use commercially reasonable efforts to limit suspension to each End User in breach of Section 2 or 3(b) and restore access upon elimination of the relevant breach; or (ii) failure by Institution to make any payment when due under this Agreement; provided, however, that Kanopy will restore access upon Institution's payment of all outstanding fees.

(c) Termination. Notwithstanding anything to the contrary, this Agreement may be terminated as follows: (i) upon a material breach of this Agreement by a party, which breach is not cured within thirty (30) days after receipt of written notice from the other party; or (ii) by either party in the event the other party becomes insolvent or bankrupt; becomes the subject of any proceedings under bankruptcy, insolvency or debtor's relief law; has a receiver or manager appointed; makes an assignment for the benefit of creditors; or takes the benefit of any applicable law or statute in force for the winding up or liquidation of such party's business. For the avoidance of doubt, Institution shall not terminate this agreement prior to the end of the Term for any purpose other than those established as permissible in this Clause 6(c).

(d) Survival. Any provision that, by its terms, is intended to survive the expiration or termination of this Agreement shall survive such expiration or termination, including Sections: 3(b)(Assurances); 4 (Fees and Taxes); 5 (Intellectual Property); 6(d) (Survival); 7 (Representations and Warranties); 8 (Indemnification); 9 (Disclaimer of Warranties); 10 (Limitation of Liability); and 11 (Miscellaneous).

7. Representations and Warranties

Kanopy and Institution each represents and warrants to the other that: (a) it has the necessary power and authority to enter into this Agreement; (b) the execution and performance of this Agreement have been authorized by all necessary corporate or institutional action; (c) entry into and performance of this Agreement will not conflict with any provision of law or the certificate of incorporation, bylaws or comparable organizational documents of such party; (d) no action by any governmental entity is necessary to make this Agreement valid and

binding upon such party; and (e) it possesses all governmental licenses and approvals necessary to perform its obligations under this Agreement.

8. DISCLAIMER OF WARRANTIES

THE SERVICE, OFFERINGS AND ALL OTHER MATERIALS PROVIDED BY KANOPY UNDER THIS AGREEMENT (COLLECTIVELY, "KANOPY MATERIALS") ARE PROVIDED "AS IS," "AS AVAILABLE" AND "WITH ALL FAULTS." KANOPY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS (EXCEPT AS SET FORTH IN SECTION 7), EXPRESS OR IMPLIED, INCLUDING: (A) THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (B) ANY WARRANTY WITH RESPECT TO THE QUALITY, ACCURACY, CURRENCY OR COMPLETENESS OF THE KANOPY MATERIALS, OR THAT USE OF THE KANOPY MATERIALS WILL BE ERROR-FREE, UNINTERRUPTED, FREE FROM OTHER FAILURES OR WILL MEET INSTITUTION'S OR END USERS' REQUIREMENTS.

9. LIMITATION OF LIABILITY

(A) IN NO EVENT SHALL KANOPY OR ITS AFFILIATES AND LICENSORS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS OR COST OF COVER, ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS OCCASIONED BY OR RESULTING FROM ANY ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE KANOPY MATERIALS, SUCH AS ANY MALFUNCTION, DEFECT OR FAILURE OF ANY KANOPY MATERIALS, EVEN IF KANOPY HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE; AND (B) IN NO EVENT SHALL KANOPY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES RECEIVED BY KANOPY FROM INSTITUTION UNDER THIS AGREEMENT IN THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENTS GIVING RISE TO LIABILITY AROSE.

10. Miscellaneous

(a) Independent Contractors. The relationship between Kanopy and Institution established by this Agreement is solely that of independent contractors. Neither party is in any way the partner or agent of the other, nor is either party authorized or empowered to create or assume any obligation of any kind, implied or expressed, on behalf of the other party, without the express prior written consent of such other party.

(b) Notice. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and sent to the parties as follows: (i) if to Kanopy, at the address set forth for Kanopy in the signature page herein, Attn: Legal Department, or, if different, in the most recent Order Form; (ii) if to Institution, at the address set forth for Institution in the signature page herein or, if different, in the most recent Order Form.

(c) Assignment. Institution may not assign this Agreement, or assign or delegate any right or obligation hereunder, by operation of law or otherwise without the prior written consent of Kanopy. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) No Third-Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective successors and permitted assigns.

(e) Interpretation. For the purposes of this Agreement: (i) the words "such as," "include," "includes" and "including" shall be deemed to be followed by the words "without limitation;" (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(f) Entire Agreement. This Agreement and the attached addendum contain the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous or contemporaneous oral or written negotiations or agreements with respect to such subject matter.

(g) Amendment. This Agreement may not be amended except in a writing executed by an authorized representative of each party.

(h) Severability. If any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed and enforced, without regard to conflict of laws principles, in accordance with: (i) if Institution is domiciled in the United States or Canada, the laws of the state or province in which Institution is domiciled; or (ii) if Institution is domiciled outside the United States and Canada, the laws of the country in which Institution is domiciled. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

(j) No Waiver. The failure of either party to require strict performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Any waiver of the provisions of this Agreement, or of any breach or default hereunder, must be set forth in a written instrument signed by the party against which such waiver is to be enforced.

(k) U.S. Government Entities. This section applies to access to or use of the Service by a branch or agency of the United States Government ("U.S. Government"). The Service includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualifies as "commercial items" as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The U.S. Government shall acquire only those rights set forth in this Agreement with respect to the such items, and any access to or use of the Service by the U.S. Government constitutes: (1) agreement by the U.S. Government that that such items are "commercial computer software" and "commercial computer software documentation" as defined in this section; and (2) acceptance of the rights and obligations herein.

(l) Force Majeure. Except with respect to payment obligations under Section 4, neither party shall be liable for any failure to perform under this Agreement to the extent due to any act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction of production facilities, insurrection or any other cause beyond the reasonable control of the party invoking this provision.

(m) Confidentiality. Each party acknowledges and agrees that it shall treat the terms and conditions of this Agreement, including any pricing information, as confidential information and not disclose such information to any third party except to the extent required by applicable law. For the avoidance of doubt, the parties acknowledge and agree that Kanopy may identify Customer as a Kanopy customer, and Customer may identify Kanopy as a provider of content to Customer.

(n) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

City of Santa Fe ADDENDUM

This agreement incorporates the additional terms and conditions in the addendum between Kanopy (Contractor) and the CITY OF SANTA FE (City).

TERMINATION

This Agreement may be terminated by City upon 30 days written notice to the CONTRACTOR.

INDEMNIFICATION

CONTRACTOR shall indemnify, hold harmless and defend CITY from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from CONTRACTOR's performance under this Agreement as well as the performance of CONTRACTOR's employees, agents, representatives and subcontractor. Provided, however, that CONTRACTOR shall have no such indemnification obligation if the suit, judgement, execution, claim, action or demand arises in any way from CITY's use of CONTRACTOR's platform, or the content contained thereon, in a manner that breaches the Master Agreement entered into between the PARTIES.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by CITY in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. CITY and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

APPLICABLE LAW; CHOICE OF LAW; VENUE

CONTRACTOR shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of CITY of Santa Fe. In any action, suit or legal dispute arising from this Agreement, CONTRACTOR agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement

shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by CITY for the performance of this Agreement. If sufficient appropriations and authorization are not made by CITY, this Agreement shall terminate upon written notice being given by CITY to CONTRACTOR. The CITY's decision as to whether sufficient appropriations are available shall be accepted by CONTRACTOR and shall be final. CONTRACTOR agrees not to purport to bind CITY to any obligation not assumed herein by CITY unless CONTRACTOR has express written authority to do so, and then only within the strict limits of that authority.

INSURANCE

CONTRACTOR shall maintain general liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. CONTRACTOR shall furnish CITY with proof of insurance of CONTRACTOR's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

THIRD PARTY BENEFICIARIES

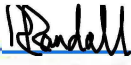
By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than CITY and CONTRACTOR. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

Signature Lines required:

City of Santa Fe:


16, 2024 11:11 MST)

Randy Randall (Nov

John Blair, City Manager

Date: **Nov 16, 2024**

CONTRACTOR:

Kanopy


Jason Tyrrell (Oct 29, 2024 15:01 PDT)

Name: **Jason Tyrrell**

Title: **General Manager**

Date: **Oct 29, 2024**

Attest:


Andrea Salazar (Dec 13, 2024 14:19 MST)

City Clerk

XIV

City Attorney's Office:


Oct 29, 2024

Rebecca Mnuk-Herrmann, Assistant City Attorney

Approved for Finances:


Emily K. Oster

Emily Oster, Finance Director



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
07/09/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Philadelphia PA Office 100 North 18th Street 15th Floor Philadelphia PA 19103 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105 E-MAIL ADDRESS:														
INSURED Kanopy, Inc. 781 Beach Street Suite 2nd Floor San Francisco CA 94109-1254 USA	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: The Continental Insurance Company</td><td>35289</td></tr><tr><td>INSURER B: Valley Forge Insurance Co</td><td>20508</td></tr><tr><td>INSURER C: Continental Casualty Company</td><td>20443</td></tr><tr><td>INSURER D: Lloyd's Syndicate No. 2623</td><td>AA1128623</td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: The Continental Insurance Company	35289	INSURER B: Valley Forge Insurance Co	20508	INSURER C: Continental Casualty Company	20443	INSURER D: Lloyd's Syndicate No. 2623	AA1128623	INSURER E:		INSURER F:	
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INSURER F:															

COVERAGES**CERTIFICATE NUMBER:** 570107201662**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS												
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			6080688803	06/09/2024	06/09/2025	<table><tr><td>EACH OCCURRENCE</td><td>\$1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$1,000,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$15,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$2,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$2,000,000</td></tr></table>	EACH OCCURRENCE	\$1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000	MED EXP (Any one person)	\$15,000	PERSONAL & ADV INJURY	\$1,000,000	GENERAL AGGREGATE	\$2,000,000	PRODUCTS - COMP/OP AGG	\$2,000,000
EACH OCCURRENCE	\$1,000,000																		
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MED EXP (Any one person)	\$15,000																		
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GENERAL AGGREGATE	\$2,000,000																		
PRODUCTS - COMP/OP AGG	\$2,000,000																		
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			6080688817	06/09/2024	06/09/2025	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td></td></tr><tr><td>BODILY INJURY (Per accident)</td><td></td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td></td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000	BODILY INJURY (Per person)		BODILY INJURY (Per accident)		PROPERTY DAMAGE (Per accident)					
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BODILY INJURY (Per accident)																			
PROPERTY DAMAGE (Per accident)																			
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			6080688848	06/09/2024	06/09/2025	<table><tr><td>EACH OCCURRENCE</td><td>\$15,000,000</td></tr><tr><td>AGGREGATE</td><td>\$15,000,000</td></tr></table>	EACH OCCURRENCE	\$15,000,000	AGGREGATE	\$15,000,000								
EACH OCCURRENCE	\$15,000,000																		
AGGREGATE	\$15,000,000																		
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	6080688820 WC (AOS) 6080688834 WC (CA)	06/09/2024 06/09/2024	06/09/2025 06/09/2025	<table><tr><td><input checked="" type="checkbox"/> PER STATUTE</td><td>OTH-ER</td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$1,000,000</td></tr><tr><td>E.L. DISEASE-EA EMPLOYEE</td><td>\$1,000,000</td></tr><tr><td>E.L. DISEASE-POLICY LIMIT</td><td>\$1,000,000</td></tr></table>	<input checked="" type="checkbox"/> PER STATUTE	OTH-ER	E.L. EACH ACCIDENT	\$1,000,000	E.L. DISEASE-EA EMPLOYEE	\$1,000,000	E.L. DISEASE-POLICY LIMIT	\$1,000,000				
<input checked="" type="checkbox"/> PER STATUTE	OTH-ER																		
E.L. EACH ACCIDENT	\$1,000,000																		
E.L. DISEASE-EA EMPLOYEE	\$1,000,000																		
E.L. DISEASE-POLICY LIMIT	\$1,000,000																		
D	Cyber Liability			FSCE02403512 Tech E&O / Prof Liab SIR applies per policy terms & conditions	07/09/2024	07/09/2025	<table><tr><td>Per Claim/Aggregate</td><td>\$5,000,000</td></tr><tr><td>SIR per Aggregate</td><td>\$250,000</td></tr></table>	Per Claim/Aggregate	\$5,000,000	SIR per Aggregate	\$250,000								
Per Claim/Aggregate	\$5,000,000																		
SIR per Aggregate	\$250,000																		

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

OverDrive Inc. One OverDrive Way Cleveland OH 44125 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Central, Inc.</i>
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Holder Identifier :

Certificate No : 570107201662



State of New Mexico
Purchase Order

PO Number to be on all Invoices and Correspondence

Page: 1

Department of Cultural Affairs

407 Galisteo St. Bataan Memorial Bld.
Suite 264
Santa Fe NM 87501
United States

Dispatched

Purchase Order 50500-0000052307	Date 08-06-2024	Revision
Payment Terms Pay Now	Freight Terms FOB Destination	Ship Via Best Way
Buyer Emmanuel Castillo	Phone	Currency USD

Dispatch Via Print

Supplier: 0000054360
CITY OF SANTA FE
PO BOX 909
SANTA FE NM 87504-0000
United States

Ship To: 1209 Camino Carlos
Rey
Garey Carruthers
Santa Fe NM 87507
United States

Bill To: 1209 Camino Carlos Rey
Garey Carruthers
Santa Fe NM 87507
United States

Origin: EXE **ExclExcl#:** 13-1-98-A

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
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1 - 1	2022 GO Bonds Allocation	1.00	EA	\$345,185.71	\$345,185.71	08/06/2024
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AID for Santa Fe Public Library

50500-89200-A22G5372-547400- - - -92436-G5372

Attention: LAUREN CONLEY

Schedule Total \$345,185.71

Item Total \$345,185.71

Total PO Amount \$345,185.71

Agency Approval - I certify that the proposed purchase represented by this document is authorized by and is made in accordance with all State (and if applicable Federal) legislation rules and regulation. I further certify that adequate unencumbered cash and budget expenditure authority exists for this proposed purchase and all other outstanding purchase commitments and accounts payable.

Authorized Signature

STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT- PURCHASING DIVISION
TERMS AND CONDITIONS UNLESS OTHERWISE SPECIFIED

SPD-101A (04/19)

1. GENERAL: When the State Purchasing Agent issues a purchase document in response to the Vendors bid, a binding contract is created.
2. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process, and then only to the extent, if any, specified elsewhere in this order.
3. ASSIGNMENT:
 - A: Neither the order, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in subparagraph 3B below or as expressly authorized in writing by the STATE PURCHASING AGENTS OFFICE. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.
 - B: Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.
4. STATE FURNISHED PROPERTY: State furnished property shall be returned to the state upon request in the same condition as received except for ordinary wear, tear, and modifications ordered hereunder.
5. DISCOUNTS: Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within 20 days will be considered after the award of the contract. Discounted time will be computed from the date of receipt of the merchandise or invoice, whichever is later.
6. INSPECTION: Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for non-conformance with specifications shall be removed, at the Vendors risk and expense, promptly after notice of rejection.
7. INSPECTION OF PLANT: The State Purchasing Agent may inspect, at any reasonable time, the part of the contractors, or any subcontractor's plant or place of business, which is related to the performance of this contract.
8. COMMERCIAL WARRANTY: The Vendor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such supplies or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other cause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.
9. TAXES: The unit price shall exclude all State taxes.
10. PACKING, SHIPPING AND INVOICING:
 - A: The States purchase document number and the Vendors name, users name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipment. The users count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.
 - B: The Vendors invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices and extended totals. Separate invoices shall be rendered for each and every complete shipment.
 - C: Invoices must be submitted to the using agency and NOT THE STATE PURCHASING AGENT.
11. DEFAULT: The State reserves the right to cancel all or any part of this order without cost to the State, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendors default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, such causes include, but are not restricted to, acts of God or of the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor where obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.
12. NON-COLLUSION: In signing this bid, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this proposal submitted to the State Purchasing Agent.
13. NON-DISCRIMINATION: Vendors doing business with the State of New Mexico must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of that Act, Rev., 1979.
14. THE PROCUREMENT CODE: Sections 13-1-28 through 13-1-199 NMSA 1978 imposes civil and criminal penalties for its violation.
In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.
15. All bid items are to be NEW and most current production, unless otherwise specified.
16. PAYMENT FOR PURCHASES: Except as otherwise agreed to: late payment charges may be assessed against the user state agency in the amount and under the conditions set forth in section 13-1-158 NMSA 1978.
17. WORKERS COMPENSATION: The Contractor agrees to comply with state laws and rules pertaining to workers compensation benefits for its employees. If the Contractor fails to comply with Workers Compensation Act and applicable rules when required to do so, this (Agreement) may be terminated by the contracting agency.
18. GENERAL SERVICES STATEWIDE PRICE AGREEMENT: Any purchase order entered into pursuant to a Statewide Price Agreement incorporates by this language all the terms and conditions of that Statewide Price Agreement and by accepting payment under this purchase order the Contractor agrees to and accepts all the terms and conditions of the Statewide Price Agreement.

