



The Purchasing Memo

**Date:** February 24, 2026

**To:** Chief Brian Moya, Interim City Manager

**From:** Margaret Neill, Library Division Director 

**Via:** Manuel Sanchez, Interim Community Services Director   
 Manuel Sanchez (Feb 25, 2026 16:54:10 MST)

Marcella Apodaca, Business Operations Manager 

**Subject:** Request for Approval of Contract Amendment for Digital Materials

**Vendor Name:** Kanopy Inc.

**Munis Vendor Number:** 8594

**ITEM AND ISSUE:**

The Community Services Department, Library Division, respectfully requests your review and approval of Amendment #3, to Contract Number 3250286 with Kanopy, OverDrive Holdings, Inc. for digital media streaming. Amendment #3's total compensation is not to exceed \$108,000.00, for a term that ends on March 9, 2027.

**CONTRACT NUMBER:**

The FY24 Munis contract number is 3250286.

**BACKGROUND AND SUMMARY:**

The Library Division is requesting a contract amendment to expend all funding on digital materials. The original contract was approved on November 16, 2024. The original item number assigned by the City Clerk was 24-0700. The initial contract amount was \$50,000.00.

Amendment #1 was added to the original contract in FY25, item number assigned by the City Clerk was 25-0215. The Amendment #1 deposit (attached) is on file with Kanopy Inc., and applies to the Contract for the amount of \$36,337.76, and in conjunction with Amendment #2, applies toward the total not to exceed amount of \$58,000.00. Amendment #3 combines the previous expended and unexpended amounts for a limit/not to exceed of \$108, 000.00 (The original contract amount plus amendments 1-3). The contract with Kanopy expired on September 27, 2025.

**PRIOR APPROVALS AND SUPPORTING INFORMATION:**

**FUNDING SOURCE:**

**Fund Name/Number:** General Fund/Fund 100

**Munis Org Name/Number:** Library Admin./1000101

**Munis Object Name/Number:** Books/Subscriptions/Periodicals/530700

Total: \$21,662.24

**Budget Officer / Designee:** Andy Hopkins **Date:** 02/26/2026

**Budget Officer Comment/Exceptions:** \_\_\_\_\_

**PROCUREMENT METHOD:**

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

**Chief Procurement Officer (CPO)/Designee:** [Signature] **Date:** 03/06/2026

**CPO Comment/Exceptions:** \_\_\_\_\_

**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:**

General Services Contract Amendment

Horizons Declination

CPO Service Determination Email

Procurement document: Exemption Determination/Email

Vendor's Quote

Deposit Documentation

Certificate of Liability Insurance (COI)

Original contract packet (with previous contract amendments)

Item #: 26-0089  
Munis Contract #: 3250286  
Original Contract Item #: \_\_\_\_\_  
SWPA/GSA/Coop/RFP/ITB #: \_\_\_\_\_

**CITY OF SANTA FE, COMMUNITY SERVICES DEPARTMENT  
AMENDMENT No. 03 TO  
Digital Media Contract Contract # 3250286  
Item #25-0214**

This AMENDMENT No. 03 (the "Amendment") amends the CITY OF SANTA FE CONTRACT, dated November 16, 2024 (the "Contract"), between the City of Santa Fe (the "Institution") and Kanopy, Inc, OverDrive Holdings, Inc. (the "Contractor"), collectively referred to as the "Parties". The date of this Amendment shall be the date when it is executed by the Institution and the Contractor whichever occurs last.

**RECITALS:**

- A. Under the terms of the Contract, Contractor has agreed to provide the 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. Section 4 - Fees and Taxes**

The Parties agree that Article 4(a) will become Article 4(a)(i) and the following will be added as Article 4(a)(ii):

(a)(ii) Kanopy agrees that it will not bill Institution in excess of one hundred and eight thousand dollars (\$108,000) (the "Twelve-Month Fee") during the twelve (12) month period beginning on March 9<sup>th</sup>, 2026 and ending on March 9<sup>th</sup>, 2027. On or about March 9, 2026, or as soon as practicable, Kanopy will inform Institution of the dollar amount Institution has on deposit with Kanopy. The Institution agrees that within sixty (60) days of March 9, 2026, the Institution will pay Kanopy the difference between one hundred and eight thousand dollars (\$108,000) and the dollar amount the Institution has on deposit with Kanopy on March 9, 2026. During the rest of the term of this Agreement, Institution will have no additional payment obligations to the Contractor.

Kanopy and the Institution will negotiate new payment terms within the sixty (60) days prior to March 9, 2027. If at the end of the above twelve (12) month period, end-user engagement generates less in fees than the Twelve-Month Fee, the difference between the Twelve-Month Fee and fees generated by end-user engagement shall be credited to the next year's negotiated

Twelve-Month Fee. If Kanopy determines that the Institution and its End User's usage of the service is tracking above the guaranteed cap, Kanopy will notify the Institution of this determination, and the Institution will work with Kanopy to manage and limit usage of the service.

**2. Section 6 - Term and Termination**

The Parties agree that the following will replace Article 6(a) Term:

(a) Term. The term for this Agreement shall commence on 03/09/2026 and continue in effect until 03/09/2027.

**3. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

CONTRACTOR:  
KANOPY INC.

Brian J Moya

Brian J Moya (Mar 7, 2026 08:49:28 MST)

CHIEF BRIAN MOYA 03/07/2026  
INTERIM CITY MANAGER

Jason Tyrrell

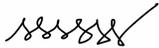
Jason Tyrrell (Feb 19, 2026 08:07:28 PST)

JASON TYRELL  
GENERAL MANAGER

DATE: Feb 19, 2026

NMBTIN: \_\_\_\_\_

ATTEST:



GERALYN CARDENAS, INTERIM CITY CLERK 

Approved to form and legal sufficiency by:

Sarah Piltch

Sarah Piltch (Feb 19, 2026 09:30:27 MST)

SARAH PILTCH, ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



ANDREA PHILLIPS (Mar 6, 2026 17:04:38 MST)

ANDREA PHILLIPS, INTERIM FINANCE DIRECTOR

# Kanopy Amendment 3

Final Audit Report

2026-02-19

Created:	2026-02-18
By:	MATTHEW HARDING (mrharding@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAvw9j Vlx4YP1xYN4HhNFmXGNmkLu_42oS

## "Kanopy Amendment 3" History

-  Document created by MATTHEW HARDING (mrharding@santafenm.gov)  
2026-02-18 - 5:01:25 PM GMT- IP address: 63.232.20.2
-  Document emailed to Jason Tyrrell (jtyrrell@overdrive.com) for signature  
2026-02-18 - 5:02:03 PM GMT
-  Email viewed by Jason Tyrrell (jtyrrell@overdrive.com)  
2026-02-19 - 8:43:20 AM GMT- IP address: 52.6.205.216
-  Document e-signed by Jason Tyrrell (jtyrrell@overdrive.com)  
Signature Date: 2026-02-19 - 4:07:28 PM GMT - Time Source: server- IP address: 67.161.31.239
-  Document emailed to Sarah Piltch (scpiltch@santafenm.gov) for signature  
2026-02-19 - 4:07:30 PM GMT
-  Email viewed by Sarah Piltch (scpiltch@santafenm.gov)  
2026-02-19 - 4:27:55 PM GMT- IP address: 63.232.20.2
-  Document e-signed by Sarah Piltch (scpiltch@santafenm.gov)  
Signature Date: 2026-02-19 - 4:30:27 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.  
2026-02-19 - 4:30:27 PM GMT



## Services Offered to the City of Santa Fe (FY26)

### 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.

- ADA Accessibility Consulting Services
- Auctioneering Services
- Bulk Mailing and Sorting
- Call Center Services
- Computer Refurbishing
- Courier Services
- Decontamination, Sanitation and Sterilization Services
- Debris Removal
- Document Imaging
- Document Shredding
- Envelope Stuffing
- General Labor
- Hard Drive Destruction
- Janitorial and Housekeeping Services – Including Carpet Cleaning & Floor Care
- Landscape Irrigation
- Landscaping
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Medical Waste Disposal
- Meeting Minute Preparation Services
- Pest Control and Extermination Services
- Printing Services
- Rest Area Maintenance
- Screen Printing
- Snow Removal
- Temporary Staffing Services
- Yard, Grounds, and Lawn Maintenance

### Permissive:

The services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities as permissible for sale under the State Use Act through Horizons of New Mexico. While the Council recognizes that certain Horizons of New Mexico members are capable of performing the services listed below, said services are considered permissive and excluded from the mandatory aspect of the State Use Program. Any procurement of the below services through Horizons of New Mexico is at the discretion of the purchasing agent and will be considered by the Council on a case-by-case basis.

- Graphic Design
- Graphic Design - Logo Design
- IT – Enterprise Application
- IT – IV & V
- IT Network and Database Management
- IT Support
- IT Security Services
- IT – Web Design
- IT – Web Programmer
- Marketing
- Social Media Marketing

For the complete State Use service list, please go to: <http://horizonsofnewmexico.org/services.html>

**From:** [DUTTON-LEYDA, TRAVIS K.](#)  
**To:** [NEILL, MARGARET M.](#)  
**Subject:** RE: Blanket purchase exemption  
**Date:** Wednesday, July 16, 2025 11:09:33 AM  
**Attachments:** [image002.png](#)  
[image004.png](#)

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Greetings,

These are exempt pursuant to NMSA Section, 13-1-98 (E).

E. 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.

Regards,

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



[Book time to meet with me](#)

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

Vendor Registration Sites and Current Procurement Opportunities:

[Current] <https://santafenm.munisselfservice.com/vss/>

[Transitioning] <https://procurement.opengov.com/portal/santafenm>

[Current] <https://www.withpavilion.com/>

Internal Link: [https://intranet.santafenm.gov/central\\_purchasing\\_division\\_cpd](https://intranet.santafenm.gov/central_purchasing_division_cpd)



CITY OF SANTA FE  
**FINANCE**

*“A journey of a thousand miles begins with a single step” ~ Lao Tzu*

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**From:** NEILL, MARGARET M.

**Sent:** Monday, June 30, 2025 10:01 AM

**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)>

**Subject:** Blanket purchase exemption

Good morning, Travis.

We are working on all our agreements for FY26. Instead of requesting an exemption for each, I am requesting that you issue a blanket exemption determination for the following vendors:

Baker and Taylor

Barnes and Noble

Collected Works

Ingram

Midwest Tape

Midwest Tape/Hoopla

Overdrive

Overdrive/Kanopy

All the vendors above will be providing physical and digital materials for the library's collections, in accordance with NM 13-1-98 E.

Please let me know if this is okay. Thank you!

**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](mailto:mmneill@santafenm.gov)

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Travert by Jerry Flores

**Santa Fe Public Library**

Community Services Department, City of Santa Fe, New Mexico



## Kanopy Inc. Quote

**Quote Date:** 2/25/2026

**Quote Number:** KPPU- 02252026

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

### PPU Quote Summary:

- 15 tickets per patron per month
- Access to all 32,000+ films and TV shows
- Kanopy Kids included as Pay-per-use

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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)
	<b>\$21,662.24</b>

### Pay Per Use (PPU) Program

- Budget allocation: \$58,000.00
- Date Range: March 2, 2026 –March 9, 2027

### Pay Per Use (PPU) Program

- **Access:** Kanopy will provide Institution and it's 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.

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
Kanopy Inc., EIN 99-0377373  
[www.kanopy.com](http://www.kanopy.com)



**Kanopy Inc.  
Invoice**

Invoice Date: 2025-06-12  
Invoice Number: KDEP-24296  
Purchase Order: 22506074  
Billed Address: SANTA FE PUBLIC LIBRARY  
145 WASHINGTON AVENUE  
SANTA FE, NM 87501  
UNITED STATES

**Order Summary:**

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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.

<b>Offering</b>	<b>Price (USD)</b>
<b>Pay Per Use (PPU) Program</b>	\$36,337.76
<b>Annual budget cap allocation:</b> \$36,337.76	

**Pay Per Use (PPU) Program**

- **Access:** Kanopy will provide access to its film database for access to Institution's End Users. 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" that an End User may incur in a given month) and change these any time with written notice to Kanopy. Institution may also set in place program spend caps and change these at the beginning of the month.
- **Definition:** As used herein, one or more "Play Tickets" are incurred on a Title when an End User accesses the Title in and seeks to employ the Title for use. Kanopy Kids provide 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 Play Ticket:** A maximum cost of \$1 per user Play Ticket. Cost for Kanopy Kids: A maximum cost of \$6 per unlimited 30 day session 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:** Institution may deposit non refundable funds for this program upfront, to be drawn upon by Kanopy for payment of future Play Tickets, or pay for Play Tickets upon periodical invoice. Institution may set and adjust a fixed budget for this program ("Budget") in the Service at any time and adjust other settings within the Service for the purposes of monitoring its activity under this program and receipt of notifications and alerts regarding the status of the Budget and other information relating to this program.
- **Managing Program:** Although Kanopy may send Institution alerts regarding the status of Budgets established, Institution's participation in this program will not be automatically turned off upon depletion of

the Budget. To turn off participation, Institution must provide written notice to Kanopy requesting that Kanopy turn off participation and any specifics around that process (a specific date, etc). Kanopy will turn off Institution's participation according with the Institution's written notice, without regard to the amount remaining in the Budget. Institution shall solely be responsible for managing the Budget and payment of all Play Ticket fees in excess of the Budget. In the event that Institution's participation is turned off, End Users will not be able to access any Titles under this program.

**Subtotal:** \$36,337.76  
**Taxes:** \$0.00  
**Total:** **\$36,337.76**

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**Payment Terms:**  
30 days from date of  
invoice

**Payment Remittance Details:**  
Bank Name: JPMorgan Chase  
Account Name: KANOPY  
Account Number: 952157383  
Routing Number: 044000037 (ACH), 021000021  
(Wire)  
SWIFT: CHASUS33

**Remittance advice:**  
[accounts@kanopy.com](mailto:accounts@kanopy.com)

**Check can be made to:**  
Kanopy, Inc.  
PO Box 72357  
Cleveland, OH 44192-0002

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
Kanopy, Inc., EIN 99-0377373  
<https://www.kanopy.com>



**ADDITIONAL REMARKS SCHEDULE**

AGENCY <b>Aon Risk Services Northeast, Inc.</b>		NAMED INSURED <b>Kanopy Inc One OverDrive Way Cleveland, OH 44125</b>	
POLICY NUMBER <b>SEE PAGE 1</b>			
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

**Workers' Compensation (CA)**  
Policy Number: 6080688834  
Policy Period: 06/09/2025 to 06/09/2026  
U/W Company: The Continental Insurance Company  
Bodily Injury by Accident: \$1,000,000 each accident  
Bodily Injury by Disease: \$1,000,000 policy limit  
Bodily Injury by Disease: \$1,000,000 each employee

**Cyber Liability**  
Policy Number: FSCEO2503512  
Policy Period: 06/09/2025 to 06/09/2026  
Insurer: Lloyd's Underwriter Syndicate No. AFB 2623 (73.20%) / AFB 623 (26.80%).  
Limit of Liability: \$5,000,000 Each and Every Claim  
SIR applies as per policy terms and conditions: \$250,000 (Claims Made)

**Cyber - Excess Liability**  
Policy Number: MKLV7PL0006930  
Policy Period: 06/09/2025 To 06/09/2026  
Insurer: Evanston Insurance Company  
Limit of Liability: \$5,000,000 Excess of \$5,000,000

**E&O - Technology**  
Policy Number: FSCEO2503512  
Policy Period: 06/09/2025 to 06/09/2026  
Insurer: Lloyd's Underwriter Syndicate No. AFB 2623 (73.20%) / AFB 623 (26.80%).  
Limit of Liability: \$5,000,000 Each and Every Claim  
SIR applies as per policy terms and conditions: \$250,000 (Claims Made)

## The Purchasing Memo for After-the-Fact POs (ATF POs)

**Date:** 12/05/2025

**To:** Mark Scott, City Manager   
Mark Scott (Dec 22, 2025 20:14:29 PST)

**From:** Margaret M. Neill, Library Division Director   
Margaret Neill (Dec 17, 2025 09:10:45 MST)

**Via:** Henri Hammond-Paul, Community Health and Safety Director 

Marcella Apodaca, Business Operations Manager 

**Parties Involved:** Margaret M. Neill, Library Division Director

**CC:** Emily Oster, Finance Director; Travis Dutton-Leyda, CPO; Josie Bolden, Controller

**Subject:** After-the-Fact/Post PO – Retroactive Approval

**Vendor Name:** Kanopy, Inc.

**Munis Vendor Number:** 8594

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### ITEM AND ISSUE:

We are submitting this memo to formally request retroactive approval to proceed with an After-the-Fact or Post PO for digital media streaming services provided by Kanopy, Inc., a division of OverDrive Holdings, Inc.

While in the process of submitting a contract amendment to add more funds to the Kanopy contract as well as extending the contract to a term ending on September 27, 2026, the original contract expired. As there remained credits available, the service was not discontinued and is still accessible to library patrons.

All appropriate departmental and procurement approvals will be obtained in conjunction with this request.

Next time we will work more closely with other City departments to ensure all changes and approvals are made in a timely manner and prioritize contracts that are expiring within 90 days.

Thank you for your consideration.

### CONTRACT NUMBER:

3250286

### BACKGROUND AND SUMMARY:

The original contract with Kanopy, Inc. was approved on November 16, 2024. The original item number assigned by the City Clerk was 24-0700. The contract's expiration date was September 27, 2025. On May 23, 2025, an amendment was approved adding additional funds to the contract, the item number assigned by the City Clerk for Amendment 1 was 25-0214.

On June 6, 2025, in anticipation of the new fiscal year and the upcoming expiration of the amended agreement, the Library began the process of submitting a new amendment to both add funds and extend the contract date for an additional year. A quote was obtained from the vendor, along with an updated Certificate of Insurance. The Library also began working on other contracts for review and approval. One of those contracts was with Baker and Taylor, the Library's primary book vendor, which abruptly shut down in late September after over a century of library service. Due to lack of

order fulfillment and lack of communication from the vendor, the Library Collections Manager had already made the decision in early September to cancel all back ordered items from Baker and Taylor and order from other vendors. This required amending other contracts to add funds, which took priority. Due to this, the Library could not begin working on submitting the amendment and agreement to the Contracts Administrator for legal review until October 1, 2025. In the meantime, the original quote had expired, and the Library had to request a new one. The amendment and agreement were submitted to Legal on October 3, 2025.

After Legal's approval, the packet was uploaded to the OpenGov system on November 19, 2025. It was rejected on November 21, 2025, by JoAnn Lovato, who noted that the fund amounts were incorrect and that a retroactive approval was required. After going through and making changes to the amounts, the amended agreement is once again ready for approval.

**PRIOR APPROVALS AND SUPPORTING INFORMATION:**

**FUNDING SOURCE:**

**Fund Name/Number:** General Fund/Fund 100

**Munis Org Name/Number:** Library Admin/1000101

**Munis Object Name/Number:** Books/Subscriptions/Periodicals/530700

**Budget Officer/Designee:** Andy Hopkins **Date:** 12/17/2025

**Budget Officer Comment/Exceptions:** \_\_\_\_\_

**PROCUREMENT METHOD:**

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

**Chief Procurement Officer (CPO)/Designee:** [Signature] **Date:** 12/19/2025

**CPO Comment/Exceptions:** \_\_\_\_\_

**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)
- Original contract packet (with previous contract amendments)

## The Purchasing Memo

**Date:** November 18, 2025

**To:** Mark Scott, City Manager *Mark Scott*  
Mark Scott (Dec 22, 2025 20:14:29 PST)

**From:** Margaret 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 Inc.

**Munis Vendor Number:** 8594

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### ITEM AND ISSUE:

The Community Services Department, Library Division, respectfully requests your review and approval of Amendment #2, to Contract Number 3250286 with Kanopy, OverDrive Holdings, Inc. for digital media streaming. Amendment #2 increases the amount of compensation by \$21,662.24 for a total compensation not to exceed \$58,000.00, for a term that ends on September 27, 2026.

### CONTRACT NUMBER:

The FY24 Munis contract number is 3250286.

### BACKGROUND AND SUMMARY:

The Library Division is requesting a contract amendment to expend all funding on digital materials. The original contract was approved on November 16, 2024. The original item number assigned by the City Clerk was 24-0700. Amendment #1 was added to the original contract in FY25, item number assigned by the City Clerk was 25-0215. The Amendment #1 deposit (attached) (unexpended) is on file with Kanopy Inc., and applies to the Contract for the amount of \$36,337.76, and in conjunction with the current Amendment #2, applies toward the total not to exceed amount of \$58,000.00. The contract with Kanopy expired on September 27, 2025. Kanopy Inc. has been acquired by OverDrive Holdings, Inc.

### PRIOR APPROVALS AND SUPPORTING INFORMATION:

#### FUNDING SOURCE:

**Fund Name/Number:** General Fund/Fund 100

**Munis Org Name/Number:** Library Admin./1000101

**Munis Object Name/Number:** Book/Subscriptions/Periodicals/530700

**Budget Officer / Designee:** *Andy Hopkins* **Date:** 12/17/2025

**Budget Officer Comment/Exceptions:** \_\_\_\_\_



Deposit Documentation

Certificate of Liability Insurance (COI)

Original contract packet (with previous contract amendments)

Item #: 25-0589  
Munis Contract #: 3250286  
Original Contract Item #: \_\_\_\_\_  
SWPA/GSA/Coop/RFP/ITB #: \_\_\_\_\_

**CITY OF SANTA FE, COMMUNITY SERVICES DEPARTMENT  
AMENDMENT No. 02 TO  
Digital Media Contract  
Contract # 3250286  
Item #25-0214**

This AMENDMENT No. 02 (the "Amendment") amends the CITY OF SANTA FE CONTRACT, dated November 16, 2024 (the "Contract"), between the City of Santa Fe (the "Institution") and Kanopy, Inc, OverDrive Holdings, 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 the 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. Section 6 – Term and Termination**

- (a) The Parties agree that the following shall be added to the end of Clause 6(a) Term:

“The Parties agree that as of the Effective Date of this Amendment, the Term of the Agreement shall be extended and continue in effect until September 28, 2026.”

**2. Section 4 – Fees and Taxes**

- (a) The Parties agree that the following shall be added to the end of Clause 4(a) Fees:

“Kanopy agrees that it will not bill Institution in excess of fifty eight thousand dollars (\$58,000) (the “Twelve-Month Fee”) during the twelve (12) month period beginning on September 28<sup>th</sup>, 2025 and ending on September 27<sup>th</sup>, 2026. On or about September 28, 2025, or as soon as practicable, Kanopy will inform Institution of the dollar amount Institution has on deposit with Kanopy. The Institution agrees that within sixty (60) days of September 29<sup>th</sup>, 2025, the Institution will pay Kanopy the difference between fifty-eight thousand dollars (\$58,000) and the

dollar amount the Institution has on deposit with Kanopy on September 28<sup>th</sup>, 2025. Kanopy and the Institution will negotiate new payment terms within the sixty (60) days prior to September 27<sup>th</sup>, 2026. If at the end of the above twelve (12) month period, end-user engagement generates less in fees than the Twelve-Month Fee, the difference between the Twelve-Month Fee and fees generated by end-user engagement shall be credited to the next year's negotiated Twelve-Month Fee. If Kanopy determines that the Institution and its End User's usage of the service is tracking above the guaranteed cap, Kanopy will notify the Institution of this determination, and the Institution will work with Kanopy to manage and limit usage of the service."

**3. Section 2 - Miscellaneous**

(a) Except as modified by this Amendment, the terms of the Agreement shall continue in full force and effect.

(b) The terms and provisions of this Amendment shall be binding upon each of the parties hereto and each of their respective successors and permitted assigns.

**4. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 02 to the Contract as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:

*Mark Scott*  
Mark Scott (Dec 29, 2025 11:41:03 PST)  
Mark Scott, City Manager

*Jason Tyrrell*  
Jason Tyrrell (Nov 10, 2025 15:11:50 PST)  
Jason Tyrrell

DATE: 12/29/2025

Kanopy Inc. General Manager

DATE: Nov 10, 2025

ATTEST:

*[Signature]*  
CITY CLERK *CP*

CITY ATTORNEY'S OFFICE:

*Sarah Piltch*  
Sarah Piltch (Nov 10, 2025 16:15:14 MST)  
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

*Emily K. Oster*  
FINANCE DIRECTOR



## Services Offered to the City of Santa Fe (FY26)

### 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.

- ADA Accessibility Consulting Services
- Auctioneering Services
- Bulk Mailing and Sorting
- Call Center Services
- Computer Refurbishing
- Courier Services
- Decontamination, Sanitation and Sterilization Services
- Debris Removal
- Document Imaging
- Document Shredding
- Envelope Stuffing
- General Labor
- Hard Drive Destruction
- Janitorial and Housekeeping Services – Including Carpet Cleaning & Floor Care
- Landscape Irrigation
- Landscaping
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Medical Waste Disposal
- Meeting Minute Preparation Services
- Pest Control and Extermination Services
- Printing Services
- Rest Area Maintenance
- Screen Printing
- Snow Removal
- Temporary Staffing Services
- Yard, Grounds, and Lawn Maintenance

### Permissive:

The services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities as permissible for sale under the State Use Act through Horizons of New Mexico. While the Council recognizes that certain Horizons of New Mexico members are capable of performing the services listed below, said services are considered permissive and excluded from the mandatory aspect of the State Use Program. Any procurement of the below services through Horizons of New Mexico is at the discretion of the purchasing agent and will be considered by the Council on a case-by-case basis.

- Graphic Design
- Graphic Design - Logo Design
- IT – Enterprise Application
- IT – IV & V
- IT Network and Database Management
- IT Support
- IT Security Services
- IT – Web Design
- IT – Web Programmer
- Marketing
- Social Media Marketing

For the complete State Use service list, please go to: <http://horizonsofnewmexico.org/services.html>

**From:** [DUTTON-LEYDA, TRAVIS K.](#)  
**To:** [NEILL, MARGARET M.](#)  
**Subject:** RE: Blanket purchase exemption  
**Date:** Wednesday, July 16, 2025 11:09:33 AM  
**Attachments:** [image002.png](#)  
[image004.png](#)

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Greetings,

These are exempt pursuant to NMSA Section, 13-1-98 (E).

E. 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.

Regards,

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



[Book time to meet with me](#)

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

Vendor Registration Sites and Current Procurement Opportunities:

[Current] <https://santafenm.munisselfservice.com/vss/>

[Transitioning] <https://procurement.opengov.com/portal/santafenm>

[Current] <https://www.withpavilion.com/>

Internal Link: [https://intranet.santafenm.gov/central\\_purchasing\\_division\\_cpd](https://intranet.santafenm.gov/central_purchasing_division_cpd)



CITY OF SANTA FE  
**FINANCE**

*“A journey of a thousand miles begins with a single step” ~ Lao Tzu*

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**From:** NEILL, MARGARET M.

**Sent:** Monday, June 30, 2025 10:01 AM

**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)>

**Subject:** Blanket purchase exemption

Good morning, Travis.

We are working on all our agreements for FY26. Instead of requesting an exemption for each, I am requesting that you issue a blanket exemption determination for the following vendors:

Baker and Taylor

Barnes and Noble

Collected Works

Ingram

Midwest Tape

Midwest Tape/Hoopla

Overdrive

Overdrive/Kanopy

All the vendors above will be providing physical and digital materials for the library's collections, in accordance with NM 13-1-98 E.

Please let me know if this is okay. Thank you!

**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](mailto:mmneill@santafenm.gov)

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**Santa Fe Public Library**

Community Services Department, City of Santa Fe, New Mexico

Created by Jerry Horvath



**Quote Date:** 11/18/2025  
**Quote Number:** KPPU-11182025  
**Quoted To:** Santa Fe Public Library  
145 Washington Avenue  
Santa Fe, NM 87501  
US

**PPU Quote Summary:**

- 15 tickets per patron per month
- Access to all 32,000+ films and TV shows
- Kanopy Kids included as Pay-per-use

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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.

<b>Offering</b>	<b>Total (USD)</b>
	<b>\$21,662.24</b>

**Pay Per Use (PPU) Program**

- Budget allocation: \$58,000.00
- Date Range: September 28, 2025 – September 29, 2026

**Pay Per Use (PPU) Program**

- **Access:** Kanopy will provide Institution and it's 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.

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
Kanopy Inc., EIN 99-0377373  
[www.kanopy.com](http://www.kanopy.com)



**Kanopy Inc.**  
**Invoice**

Invoice Date: 2025-06-12  
Invoice Number: KDEP-24296  
Purchase Order: 22506074  
Billed Address: SANTA FE PUBLIC LIBRARY  
145 WASHINGTON AVENUE  
SANTA FE, NM 87501  
UNITED STATES

**Order Summary:**

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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.

<b>Offering</b>	<b>Price (USD)</b>
<b>Pay Per Use (PPU) Program</b>	\$36,337.76
<b>Annual budget cap allocation:</b> \$36,337.76	

**Pay Per Use (PPU) Program**

- **Access:** Kanopy will provide access to its film database for access to Institution's End Users. 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" that an End User may incur in a given month) and change these any time with written notice to Kanopy. Institution may also set in place program spend caps and change these at the beginning of the month.
- **Definition:** As used herein, one or more "Play Tickets" are incurred on a Title when an End User accesses the Title in and seeks to employ the Title for use. Kanopy Kids provide 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 Play Ticket:** A maximum cost of \$1 per user Play Ticket. Cost for Kanopy Kids: A maximum cost of \$6 per unlimited 30 day session 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:** Institution may deposit non refundable funds for this program upfront, to be drawn upon by Kanopy for payment of future Play Tickets, or pay for Play Tickets upon periodical invoice. Institution may set and adjust a fixed budget for this program ("Budget") in the Service at any time and adjust other settings within the Service for the purposes of monitoring its activity under this program and receipt of notifications and alerts regarding the status of the Budget and other information relating to this program.
- **Managing Program:** Although Kanopy may send Institution alerts regarding the status of Budgets established, Institution's participation in this program will not be automatically turned off upon depletion of

the Budget. To turn off participation, Institution must provide written notice to Kanopy requesting that Kanopy turn off participation and any specifics around that process (a specific date, etc). Kanopy will turn off Institution's participation according with the Institution's written notice, without regard to the amount remaining in the Budget. Institution shall solely be responsible for managing the Budget and payment of all Play Ticket fees in excess of the Budget. In the event that Institution's participation is turned off, End Users will not be able to access any Titles under this program.

**Subtotal:** \$36,337.76  
**Taxes:** \$0.00  
**Total:** **\$36,337.76**

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**Payment Terms:**

30 days from date of invoice

**Payment Remittance Details:**

Bank Name: JPMorgan Chase  
Account Name: KANOPY  
Account Number: 952157383  
Routing Number: 044000037 (ACH), 021000021 (Wire)  
SWIFT: CHASUS33

**Remittance advice:**

[accounts@kanopy.com](mailto:accounts@kanopy.com)

**Check can be made to:**

Kanopy, Inc.  
PO Box 72357  
Cleveland, OH 44192-0002

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
Kanopy, Inc., EIN 99-0377373  
<https://www.kanopy.com>



**ADDITIONAL REMARKS SCHEDULE**

AGENCY <b>Aon Risk Services Northeast, Inc.</b>		NAMED INSURED <b>Kanopy Inc One OverDrive Way Cleveland, OH 44125</b>	
POLICY NUMBER <b>SEE PAGE 1</b>			
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

**Workers' Compensation (CA)**  
Policy Number: 6080688834  
Policy Period: 06/09/2025 to 06/09/2026  
U/W Company: The Continental Insurance Company  
Bodily Injury by Accident: \$1,000,000 each accident  
Bodily Injury by Disease: \$1,000,000 policy limit  
Bodily Injury by Disease: \$1,000,000 each employee

**Cyber Liability**  
Policy Number: FSCEO2503512  
Policy Period: 06/09/2025 to 06/09/2026  
Insurer: Lloyd's Underwriter Syndicate No. AFB 2623 (73.20%) / AFB 623 (26.80%).  
Limit of Liability: \$5,000,000 Each and Every Claim  
SIR applies as per policy terms and conditions: \$250,000 (Claims Made)

**Cyber - Excess Liability**  
Policy Number: MKLV7PL0006930  
Policy Period: 06/09/2025 To 06/09/2026  
Insurer: Evanston Insurance Company  
Limit of Liability: \$5,000,000 Excess of \$5,000,000

**E&O - Technology**  
Policy Number: FSCEO2503512  
Policy Period: 06/09/2025 to 06/09/2026  
Insurer: Lloyd's Underwriter Syndicate No. AFB 2623 (73.20%) / AFB 623 (26.80%).  
Limit of Liability: \$5,000,000 Each and Every Claim  
SIR applies as per policy terms and conditions: \$250,000 (Claims Made)

**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

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**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:**



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

DATE: 06/02/2025

CONTRACTOR:  
Kanopy, Inc.

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

DATE: 05/23/2025

CRS# EIN: 99-0377373

ATTEST:

*Andrea Salazar*  
ANDREA SALAZAR (Jun 6, 2025 21:55 MDT)  
CITY CLERK *ASW*

CITY ATTORNEY'S OFFICE:

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

APPROVED FOR FINANCES:

*Emily K. Oster*  
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

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**From:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 1:55 PM  
**To:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto: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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



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**From:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto:mmneill@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 12:44 PM  
**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto: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](mailto:mmneill@santafenm.gov)



**Santa Fe Public Library**  
Community Services Department, City of Santa Fe, New Mexico

Traced by Jerry Peters



**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.

<b>Offering</b>	<b>Total (USD)</b>
	<b>\$36,337.76</b>

**Pay Per Use (PPU) Program**

- Budget allocation: \$36,337.76

**Pay Per Use (PPU) Program**

- **Access:** Kanopy will provide Institution and it’s 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](http://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).

<b>PRODUCER</b> Aon Risk Services Northeast, Inc. New York NY Office One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (866) 283-7122      FAX (A/C, No.): (800) 363-0105		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> OverDrive Holdings, Inc. One OverDrive Way Cleveland OH 44125 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	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:			

**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	ADDITIONAL INSURED	SUBROGATED	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	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
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	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							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 <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			6080688848	06/09/2024	06/09/2025	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 6080688834 6080688834	06/09/2024 06/09/2024 06/09/2025	06/09/2025 06/09/2025 06/09/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT	\$1,000,000 \$1,000,000 \$1,000,000
D	Cyber Liability			FSCE02403512 Tech E&O / Prof Liab SIR applies per policy terms & conditions	07/09/2024	07/09/2025	Per Claim/Aggregate SIR per Aggregate	\$5,000,000 \$250,000

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.

<b>CERTIFICATE HOLDER</b>  City of Santa Fe 200 Lincoln Ave. Santa Fe NM 87501 USA	<b>CANCELLATION</b> 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  

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

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**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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



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**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](mailto:mmneill@santafenm.gov)



**Santa Fe Public Library**  
Community Services Department, City of Santa Fe, New Mexico

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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

underscoring material = new  
~~[bracketed material] = delete~~

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



**Quote Date:** 08/01/2024  
**Quote Number:** KCAP-01012024  
**Billing Address:** Santa Fe Public Library  
145 Washington Ave  
Santa Fe, NM 87501

### Order Summary:

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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)
	<b>\$50,000.00</b>

#### 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

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**Total Amount Due: \$50,000.00**

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
 Kanopy Inc., EIN 99-0377373  
[www.kanopy.com](http://www.kanopy.com)



MASTER AGREEMENT

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

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 (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

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**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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



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**From:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto:mmneill@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 12:44 PM  
**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto: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](mailto:mmneill@santafenm.gov)



**Santa Fe Public Library**  
Community Services Department, City of Santa Fe, New Mexico

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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

underscored material = new  
~~[bracketed material] = delete~~

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;

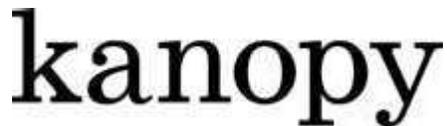
14 F. travel or shipping by common carrier or by  
15 private conveyance or to meals and lodging;

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



**Quote Date:** 08/01/2024  
**Quote Number:** KCAP-01012024  
**Billing Address:** Santa Fe Public Library  
145 Washington Ave  
Santa Fe, NM 87501

### Order Summary:

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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)
	<b>\$50,000.00</b>

#### 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

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**Total Amount Due: \$50,000.00**

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
 Kanopy Inc., EIN 99-0377373  
[www.kanopy.com](http://www.kanopy.com)



MASTER AGREEMENT

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

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 (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 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).

<b>PRODUCER</b> Aon Risk Services Central, Inc. Philadelphia PA Office 100 North 18th Street 15th Floor Philadelphia PA 19103 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): (866) 283-7122      FAX (A/C. No.): (800) 363-0105		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> Kanopy, Inc. 781 Beach Street Suite 2nd Floor San Francisco CA 94109-1254 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	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:			

Holder Identifier :

**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"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6080688803	06/09/2024	06/09/2025	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
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b>  <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	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
		BODILY INJURY ( Per person)						
		BODILY INJURY (Per accident)						
		PROPERTY DAMAGE (Per accident)						
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			6080688848	06/09/2024	06/09/2025	EACH OCCURRENCE	\$15,000,000
		AGGREGATE	\$15,000,000					
B A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A	6080688820	06/09/2024	06/09/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
				WC (AOS)			E.L. EACH ACCIDENT	\$1,000,000
				6080688834	06/09/2024	06/09/2025	E.L. DISEASE-EA EMPLOYEE	\$1,000,000
				WC (CA)			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	Per Claim/Aggregate	\$5,000,000
							SIR per Aggregate	\$250,000

Certificate No : 570107201662

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

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
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.  <b>AUTHORIZED REPRESENTATIVE</b>  



# 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

<b>Purchase Order</b> 50500-0000052307	<b>Date</b> 08-06-2024	<b>Revision</b>
<b>Payment Terms</b> Pay Now	<b>Freight Terms</b> FOB Destination	<b>Ship Via</b> Best Way
<b>Buyer</b> Emmanuel Castillo	<b>Phone</b>	<b>Currency</b> 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      **Excl/Excl#:** 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  AID for Santa Fe Public Library  50500-89200-A22G5372-547400- - - - -92436-G5372	1.00	EA	\$345,185.71	\$345,185.71	08/06/2024
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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.

Log # {Finance use <i>only</i> }:	BA002752
Journal # {Finance use <i>only</i> }:	pd 11 JE 1197

## City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME Community Health and Safety / Library				DATE 3/27/2024	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<b>EXPENDITURES</b>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
Books, Subscriptions Periodicals	2510101	530700	LIB2425103	245,000	
Software Subscriptions	2510101	530710	LIB2425103	5,000	
Furniture Fixtures InvExempt	2510101	572000	LIB2425103	23,000	
Data Processing Equip InvExempt	2510101	572800	LIB2425103	72,186	
<b>REVENUES</b>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>
Revenue 2022 GO Bond for Libraries	2510101	490230		(345,186)	

**JUSTIFICATION:** *(use additional page if needed)*  
 --Attach supporting documentation/memo

\$ 0 \$ -

This BAR is to budget the 2022 GO Bond. The 2022 General Obligation Bond was passed by NM citizens to benefit NM libraries. The purpose of this award is to supplement local funding for library materials, equipment and supplies that provide or enhance access to information for library patrons. This BAR breaks down amounts into accounts as the library is allowed according to the terms and conditions of this award.

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance
Fund(s) Affected	Increase/(Decrease)
<b>TOTAL:</b>	<b>0</b>

Marcella Apodaca <i>MA</i> Prepared By <i>(print name)</i> <i>Margaret Neill</i> <small>Margaret Neill (Apr 24, 2024 10:13 MDT)</small> Division Director Signature <i>{optional}</i>	04/23/24 Date	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	Andy Hopkins Budget Officer	Apr 25, 2024 Date
Maria Tucker Department Director Signature	Apr 24, 2024 Date	<b>CITY COUNCIL APPROVAL</b> City Council Approval Date <div style="border: 1px solid black; padding: 5px; display: inline-block; color: green; font-weight: bold;">05/08/24</div> Agenda Item #: <div style="border: 1px solid black; padding: 5px; display: inline-block; color: green; font-weight: bold;">#9-e</div>	Finance Director <i>{≤ \$5,000}</i> City Manager <i>{≤ \$60,000}</i>	Date Date

# Kanopy\_Packet\_CM\_11\_13\_2025 (1)

Final Audit Report

2025-12-29

Created:	2025-12-29
By:	RACHEL GABALDON (rdgabaldon@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZXsLeu_doXrxVZbcUOBK9XCMJRr6PmZk

## "Kanopy\_Packet\_CM\_11\_13\_2025 (1)" History

-  Document created by RACHEL GABALDON (rdgabaldon@santafenm.gov)  
2025-12-29 - 4:03:58 PM GMT- IP address: 63.232.20.2
-  Document sent to ANDREA PHILLIPS (akphillips@santafenm.gov) and Mark Scott (mscott@santafenm.gov) for signature. One of them to sign  
2025-12-29 - 4:05:45 PM GMT
-  Email viewed by Mark Scott (mscott@santafenm.gov)  
2025-12-29 - 7:40:45 PM GMT- IP address: 73.192.165.113
-  Document e-signed by Mark Scott (mscott@santafenm.gov)  
Signature Date: 2025-12-29 - 7:41:03 PM GMT - Time Source: server- IP address: 73.192.165.113
-  Agreement completed.  
2025-12-29 - 7:41:03 PM GMT

**Signature:** *Erika Quintana*

**Email:** [efquintana@santafenm.gov](mailto:efquintana@santafenm.gov)

**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:**



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

DATE: 06/02/2025

CONTRACTOR:  
Kanopy, Inc.

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

DATE: 05/23/2025

CRS# EIN: 99-0377373

ATTEST:

*Andrea Salazar*  
ANDREA SALAZAR (Jun 8, 2025 21:55 MDT)  
CITY CLERK *ASW*

CITY ATTORNEY'S OFFICE:

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

APPROVED FOR FINANCES:

*Emily K. Oster*  
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](mailto:tkduttonleyda@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 1:55 PM  
**To:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto: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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



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**From:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto:mmneill@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 12:44 PM  
**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto: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](mailto:mmneill@santafenm.gov)



**Santa Fe Public Library**

Community Services Department, City of Santa Fe, New Mexico

Illustration by Jeffrey R. Peltzer



## 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)
	<b>\$36,337.76</b>

### 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](http://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).

<b>PRODUCER</b> Aon Risk Services Northeast, Inc. New York NY Office One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): (866) 283-7122      FAX (A/C. No.): (800) 363-0105		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> OverDrive Holdings, Inc. One OverDrive Way Cleveland OH 44125 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	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:			

**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	ADDITIONAL INSURED	SUBROGATED	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	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
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	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							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 <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			6080688848	06/09/2024	06/09/2025	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 6080688834 6080688834	06/09/2024 06/09/2024	06/09/2025 06/09/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT	 \$1,000,000 \$1,000,000 \$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	Per Claim/Aggregate SIR per Aggregate	\$5,000,000 \$250,000

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.

<b>CERTIFICATE HOLDER</b>  City of Santa Fe 200 Lincoln Ave. Santa Fe NM 87501 USA	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  

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

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**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



**From:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 1:55 PM  
**To:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto: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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



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

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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](mailto:mmneill@santafenm.gov)



## Santa Fe Public Library

Community Services Department, City of Santa Fe, New Mexico

Illustration by Jeffrey R. Peltzer

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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

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



**Quote Date:** 08/01/2024  
**Quote Number:** KCAP-01012024  
**Billing Address:** Santa Fe Public Library  
145 Washington Ave  
Santa Fe, NM 87501

**Order Summary:**

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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.

<b>Offering</b>	<b>Total (USD)</b>
	<b>\$50,000.00</b>

**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

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**Total Amount Due: \$50,000.00**

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
 Kanopy Inc., EIN 99-0377373  
[www.kanopy.com](http://www.kanopy.com)



MASTER AGREEMENT

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

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

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**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





**From:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 1:55 PM  
**To:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto: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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



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**From:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto:mmneill@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 12:44 PM  
**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto: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









**Quote Date:** 08/01/2024  
**Quote Number:** KCAP-01012024  
**Billing Address:** Santa Fe Public Library  
145 Washington Ave  
Santa Fe, NM 87501

**Order Summary:**

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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.

<b>Offering</b>	<b>Total (USD)</b>
	<b>\$50,000.00</b>

**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 it's 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

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**Total Amount Due: \$50,000.00**

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
 Kanopy Inc., EIN 99-0377373  
[www.kanopy.com](http://www.kanopy.com)



MASTER AGREEMENT

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

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 (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 Mnuik-Herrmann, Assistant City Attorney

Approved for Finances:

  
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).

<b>PRODUCER</b> Aon Risk Services Central, Inc. Philadelphia PA Office 100 North 18th Street 15th Floor Philadelphia PA 19103 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): (866) 283-7122      FAX (A/C. No.): (800) 363-0105 E-MAIL ADDRESS:														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <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> </tbody> </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 E:															
INSURER F:															
<b>INSURED</b> Kanopy, Inc. 781 Beach Street Suite 2nd Floor San Francisco CA 94109-1254 USA	<b>INSURER A:</b> The Continental Insurance Company      35289 <b>INSURER B:</b> Valley Forge Insurance Co      20508 <b>INSURER C:</b> Continental Casualty Company      20443 <b>INSURER D:</b> Lloyd's Syndicate No. 2623      AA1128623 <b>INSURER E:</b> <b>INSURER F:</b>														

**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"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6080688803	06/09/2024	06/09/2025	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
A	<b>AUTOMOBILE LIABILITY</b> <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	COMBINED SINGLE LIMIT (Ea accident)      \$1,000,000 BODILY INJURY ( Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			6080688848	06/09/2024	06/09/2025	EACH OCCURRENCE      \$15,000,000 AGGREGATE      \$15,000,000
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			6080688820 6080688834	06/09/2024 06/09/2024	06/09/2025 06/09/2025	<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	<b>Cyber Liability</b>			FSCE02403512 Tech E&O / Prof Liab SIR applies per policy terms & conditions	07/09/2024	07/09/2025	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)

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

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

<b>Purchase Order</b> 50500-0000052307	<b>Date</b> 08-06-2024	<b>Revision</b> 
<b>Payment Terms</b> Pay Now	<b>Freight Terms</b> FOB Destination	<b>Ship Via</b> Best Way
<b>Buyer</b> Emmanuel Castillo	<b>Phone</b> 	<b>Currency</b> 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      **Excl/Excl#:** 13-1-98-A

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
----------	------------------	----------	-----	----------	--------------	----------

1 - 1	2022 GO Bonds Allocation AID for Santa Fe Public Library 50500-89200-A22G5372-547400- - - -92436-G5372	1.00	EA	\$345,185.71	\$345,185.71	08/06/2024
-------	--	------	----	--------------	--------------	------------

Attention: LAUREN CONLEY

<b>Schedule Total</b>	\$345,185.71
<b>Item Total</b>	\$345,185.71
<b>Total PO Amount</b>	\$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.

Log # {Finance use only}:	BA002752
Journal # {Finance use only}:	pd 11 JE 1197

## City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME Community Health and Safety / Library				DATE 3/27/2024	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<b>EXPENDITURES</b>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
Books, Subscriptions Periodicals	2510101	530700	LIB2425103	245,000	
Software Subscriptions	2510101	530710	LIB2425103	5,000	
Furniture Fixtures InvExempt	2510101	572000	LIB2425103	23,000	
Data Processing Equip InvExempt	2510101	572800	LIB2425103	72,186	
<b>REVENUES</b>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>
Revenue 2022 GO Bond for Libraries	2510101	490230		(345,186)	

**JUSTIFICATION:** *(use additional page if needed)*  
 --Attach supporting documentation/memo

\$ 0 \$ -

This BAR is to budget the 2022 GO Bond. The 2022 General Obligation Bond was passed by NM citizens to benefit NM libraries. The purpose of this award is to supplement local funding for library materials, equipment and supplies that provide or enhance access to information for library patrons. This BAR breaks down amounts into accounts as the library is allowed according to the terms and conditions of this award.

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance
Fund(s) Affected	Increase/(Decrease)
<b>TOTAL:</b>	<b>0</b>

Marcella Apodaca <i>MA</i> Prepared By <i>(print name)</i> <i>Margaret Neill</i> <small>Margaret Neill (Apr 24, 2024 10:13 MDT)</small> Division Director Signature <i>{optional}</i>	04/23/24 Date	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	<i>Andy Hopkins</i> Budget Officer Finance Director <i>{≤ \$5,000}</i> City Manager <i>{≤ \$60,000}</i>	Apr 25, 2024 Date
<i>Marie Tucker</i> Department Director Signature	Apr 24, 2024 Date	<b>CITY COUNCIL APPROVAL</b> City Council Approval Date: <span style="border: 1px solid black; padding: 2px;">05/08/24</span> Agenda Item #: <span style="border: 1px solid black; padding: 2px;">#9-e</span>		

**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:**



**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:

CONTRACTOR:

Kanopy, Inc.

*Mark Scott*

*Jason Tyrrell*

Mark Scott (Jun 2, 2025 13:00 MDT)

Jason Tyrrell (May 23, 2025 10:07 PDT)

MARK SCOTT, CITY MANAGER

Jason Tyrrell, General Manager

DATE: 06/02/2025

DATE: 05/23/2025

CRS# EIN: 99-0377373

ATTEST:

*Andrea Salazar*

ANDREA SALAZAR (Jun 8, 2025 21:55 MDT)

CITY CLERK

*ASW*

CITY ATTORNEY'S OFFICE:

*Patricia Feghali*

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

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

*Emily K. Oster*

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](mailto:tkduttonleyda@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 1:55 PM  
**To:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto: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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



---

**From:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto:mmneill@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 12:44 PM  
**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto: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](mailto:mmneill@santafenm.gov)



## Santa Fe Public Library

Community Services Department, City of Santa Fe, New Mexico

Illustration by Jeffrey R. Peltzer



## 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)
	<b>\$36,337.76</b>

### Pay Per Use (PPU) Program

- Budget allocation: \$36,337.76

### Pay Per Use (PPU) Program

- **Access:** Kanopy will provide Institution and it's 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](http://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.

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<b>PRODUCER</b> Aon Risk Services Northeast, Inc. New York NY Office One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): (866) 283-7122      FAX (A/C. No.): (800) 363-0105		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> OverDrive Holdings, Inc. One OverDrive Way Cleveland OH 44125 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	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:			

**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	ADDITIONAL INSURED	SUBROGATED	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			6080688803	06/09/2024	06/09/2025	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
GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:								
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input 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	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							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 <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			6080688848	06/09/2024	06/09/2025	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	06/09/2024	06/09/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
				6080688834	06/09/2024	06/09/2025	E.L. EACH ACCIDENT	\$1,000,000
				WC (CA)			E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000
D	<input checked="" type="checkbox"/> Cyber Liability			FSCE02403512	07/09/2024	07/09/2025	Per Claim/Aggregate	\$5,000,000
							SIR per Aggregate	\$250,000
Tech E&O / Prof Liab SIR applies per policy terms & conditions								

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.

<b>CERTIFICATE HOLDER</b>  City of Santa Fe 200 Lincoln Ave. Santa Fe NM 87501 USA	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  <i>Aon Risk Services Northeast, Inc.</i>

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

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**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



**From:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 1:55 PM  
**To:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto: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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



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**From:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto:mmneill@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 12:44 PM  
**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto: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](mailto:mmneill@santafenm.gov)



## Santa Fe Public Library

Community Services Department, City of Santa Fe, New Mexico

Illustration by Jeffrey R. Peltzer

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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

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



**Quote Date:** 08/01/2024  
**Quote Number:** KCAP-01012024  
**Billing Address:** Santa Fe Public Library  
145 Washington Ave  
Santa Fe, NM 87501

**Order Summary:**

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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.

<b>Offering</b>	<b>Total (USD)</b>
	<b>\$50,000.00</b>

**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 it's 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

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**Total Amount Due: \$50,000.00**

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
 Kanopy Inc., EIN 99-0377373  
[www.kanopy.com](http://www.kanopy.com)



MASTER AGREEMENT

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

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 (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

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**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





**From:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 1:55 PM  
**To:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto: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](mailto:tkduttonleyda@santafenm.gov)

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

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



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**From:** NEILL, MARGARET M. <[mmneill@santafenm.gov](mailto:mmneill@santafenm.gov)>  
**Sent:** Monday, July 15, 2024 12:44 PM  
**To:** DUTTON-LEYDA, TRAVIS K. <[tkduttonleyda@santafenm.gov](mailto: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









**Quote Date:** 08/01/2024  
**Quote Number:** KCAP-01012024  
**Billing Address:** Santa Fe Public Library  
145 Washington Ave  
Santa Fe, NM 87501

**Order Summary:**

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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.

<b>Offering</b>	<b>Total (USD)</b>
	<b>\$50,000.00</b>

**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 it's 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

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**Total Amount Due: \$50,000.00**

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Kanopy, One OverDrive Way, Cleveland, OH 44125 USA  
 Kanopy Inc., EIN 99-0377373  
[www.kanopy.com](http://www.kanopy.com)



MASTER AGREEMENT

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

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 (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 Oster, Finance Director





# 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

<b>Purchase Order</b> 50500-0000052307	<b>Date</b> 08-06-2024	<b>Revision</b>
<b>Payment Terms</b> Pay Now	<b>Freight Terms</b> FOB Destination	<b>Ship Via</b> Best Way
<b>Buyer</b> Emmanuel Castillo	<b>Phone</b>	<b>Currency</b> 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      **Excl/Excl#:** 13-1-98-A

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
----------	------------------	----------	-----	----------	--------------	----------

1 - 1	2022 GO Bonds Allocation AID for Santa Fe Public Library 50500-89200-A22G5372-547400- - - -92436-G5372	1.00	EA	\$345,185.71	\$345,185.71	08/06/2024
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Attention: LAUREN CONLEY

<b>Schedule Total</b>	\$345,185.71
<b>Item Total</b>	\$345,185.71
<b>Total PO Amount</b>	\$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.

Log # {Finance use only}:	BA002752
Journal # {Finance use only}:	pd 11 JE 1197

## City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME Community Health and Safety / Library				DATE 3/27/2024	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<b>EXPENDITURES</b>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
Books, Subscriptions Periodicals	2510101	530700	LIB2425103	245,000	
Software Subscriptions	2510101	530710	LIB2425103	5,000	
Furniture Fixtures InvExempt	2510101	572000	LIB2425103	23,000	
Data Processing Equip InvExempt	2510101	572800	LIB2425103	72,186	
<b>REVENUES</b>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>
Revenue 2022 GO Bond for Libraries	2510101	490230		(345,186)	

**JUSTIFICATION:** *(use additional page if needed)*  
 --Attach supporting documentation/memo

\$ 0 \$ -

This BAR is to budget the 2022 GO Bond. The 2022 General Obligation Bond was passed by NM citizens to benefit NM libraries. The purpose of this award is to supplement local funding for library materials, equipment and supplies that provide or enhance access to information for library patrons. This BAR breaks down amounts into accounts as the library is allowed according to the terms and conditions of this award.

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance
Fund(s) Affected	Increase/(Decrease)
<b>TOTAL:</b>	<b>0</b>

Marcella Apodaca <i>MA</i> Prepared By <i>(print name)</i> <i>Margaret Neill</i> <small>Margaret Neill (Apr 24, 2024 10:13 MDT)</small> Division Director Signature <i>{optional}</i>	04/23/24 Date	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	<i>Andy Hopkins</i> Budget Officer Apr 25, 2024 Date
<i>Marie Tucker</i> Department Director Signature	Apr 24, 2024 Date	<b>CITY COUNCIL APPROVAL</b> City Council Approval Date <div style="border: 1px solid black; padding: 5px; display: inline-block; color: green; font-weight: bold;">05/08/24</div> Agenda Item #: <div style="border: 1px solid black; padding: 5px; display: inline-block; color: green; font-weight: bold;">#9-e</div>	Finance Director <i>{≤ \$5,000}</i> Date City Manager <i>{≤ \$60,000}</i> Date

**Signature:** *Erika Quintana*

**Email:** [efquintana@santafenm.gov](mailto:efquintana@santafenm.gov)

# 26-0089 Kanopy, Inc. aka OverDrive Holdings, Inc.

Final Audit Report

2026-03-09

Created:	2026-03-09
By:	Erika Quintana (efquintana@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAcnq9ICNH_oxg9nOog6ecfqPk_nlb6ODh

## "26-0089 Kanopy, Inc. aka OverDrive Holdings, Inc." History

-  Document created by Erika Quintana (efquintana@santafenm.gov)  
2026-03-09 - 3:30:48 PM GMT- IP address: 63.232.20.2
-  Document emailed to Erika Quintana (efquintana@santafenm.gov) for signature  
2026-03-09 - 3:38:43 PM GMT
-  Document e-signed by Erika Quintana (efquintana@santafenm.gov)  
Signature Date: 2026-03-09 - 3:39:10 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to GERALYN CARDENAS (gfcardenas@santafenm.gov) for signature  
2026-03-09 - 3:39:15 PM GMT
-  Email viewed by GERALYN CARDENAS (gfcardenas@santafenm.gov)  
2026-03-09 - 3:55:50 PM GMT- IP address: 104.47.64.254
-  Document e-signed by GERALYN CARDENAS (gfcardenas@santafenm.gov)  
Signature Date: 2026-03-09 - 3:56:37 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.  
2026-03-09 - 3:56:37 PM GMT