



**Amendment No. 1
of
Contract No. NS190000001
for
Video Streaming Database
between
Kanopy dba Kanopy LLC
and the
The City of Austin**

1.0 The Contract is hereby amended as follows: Change name to Kanopy Inc. as requested by the Contractor:

	From	To
Vendor Name	Kanopy dba Kanopy LLC	Kanopy Inc.
Vendor Code (for City use only)	V00000947984	V00000947984
Vendor Federal Tax ID (FEIN)	[REDACTED]	[REDACTED]

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Linell Goodin-Brown
Contract Management Supervisor II
City of Austin, Purchasing Office

1-16-19

Date

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
KANOPY INC.
FOR
VIDEO STREAMING DATABASE**

CONTRACT NUMBER: MA 8500 NS1900000001

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Kanopy Inc. ("Contractor"), having offices at 781 Beach Street, San Francisco, CA, 94109.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Shannon Spurlock, Phone: (415) 513-1026, Email Address: Shannon.Spurlock@kanopy.com. The City's Contract Manager for the engagement shall be Jorge Valle, Phone: (512) 974-7432, Email Address: Jorge.Valle@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

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

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$177,000 for the initial contract term, \$59,000 for Option 1, \$59,000 for Option 2, for a total not-to-exceed amount of \$295,000 for all fees and expenses.

Contract Term		Contract Amount
10/01/18 - 09/31/21	Initial Term	\$ 177,000.00
10/01/21 - 09/31/22	Option 1	\$ 59,000.00
10/01/22 - 09/31/23	Option2	\$ 59,000.00
Total		\$ 295,000.00

3.2 **Invoices.**

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

City of Austin	
Department	Austin Public Library
Attention	Accounts Payable
Email Address	<u>Library.ACCSAccountsPayable@austintexas.gov</u>

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

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

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

3.3 **Payment.**

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

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

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

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

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

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

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

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

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

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

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

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

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

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

3.6.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on October 1, 2018 ("Effective Date") and shall remain in effect for an initial term of 36 months. The Contract may be extended beyond the initial term for up to 2 additional 12 month periods at the City's sole option.

Contract Term		Contract Amount
10/01/18 - 09/31/21	Initial Term	\$ 177,000.00
10/01/21 - 09/31/22	Option 1	\$ 59,000.00
10/01/22 - 09/31/23	Option2	\$ 59,000.00
Total		\$ 295,000.00

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

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

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

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

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

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

SECTION 5. OTHER DELIVERABLES

5.1 Equal Opportunity.

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

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

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

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

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

5.4 Delays.

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

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

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

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

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

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

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

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

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

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

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

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

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

7.2.1 disposal of major assets;

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

7.2.3 any significant termination or addition of provider contracts;

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

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

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

7.2.7 known or anticipated sale, merger, or acquisition;

7.2.8 known, planned or anticipated stock sales;

7.2.9 any litigation against the Contractor; or

7.2.10 significant change in market share or product focus.

7.3 **Audits and Records.**

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

7.3.2 Records Retention:

7.3.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.3.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.3.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

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

7.5 **Indemnity.**

7.5.1 Definitions:

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

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

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

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

7.5.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.6 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform

thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: Elisa Folco, Procurement Specialist IV

P O Box 1088

Austin, TX 78767

To the Contractor:

Kanopy LLC

ATTN: Shannon Spurlock, Sales Director

781 Beach Street

San Francisco, CA 94109

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

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

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

7.11 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.12 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the

performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

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

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

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

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

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

7.18 **Dispute Resolution.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.26.2 the Supplemental Purchase Terms and Conditions;

7.26.3 the Standard Purchase Terms and Conditions;

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

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

KANOPY INC.



By: _____
Signature

Name: Shannon Spurlock
Printed Name

Title: Sales Director

Date: 10/15/18

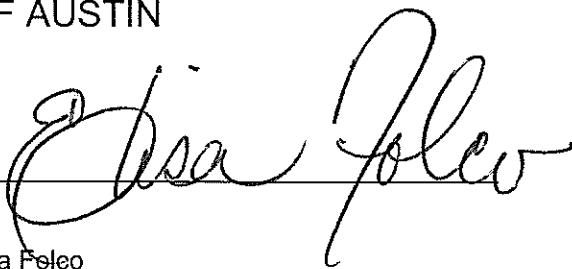
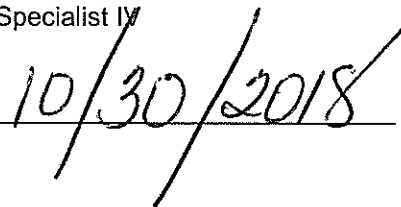
CITY OF AUSTIN

By: _____
Signature

Name: Elisa Foleo
Printed Name

Title: Procurement Specialist IV

Date: _____

List of Exhibits

Exhibit A	Kanopy Offer
Exhibit B	Non Discrimination Certification, Section 0800

Exhibit A
Kanopy Offer



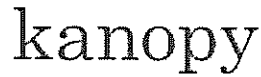
**Kanopy LLC
Quote**

Quote Date: 30 August 2018
Quote Number: KS7330516
Institution Address: Austin Public Library
PO Box 2287
Austin, TX 78768

Order Summary:

Offering	Total (USD)
Pay Per Use (PPU) Program <ul style="list-style-type: none">Price per play: \$2 per play creditDates of subscription: 1 October 2018 – 31 September 2023	
Year One: 1 October 2018 – 31 September 2019	\$59,000.00
Year Two: 1 October 2019 – 31 September 2020	\$59,000.00
Year Three: 1 October 2020 – 31 September 2021	\$59,000.00
Year Four: 1 October 2021 – 31 September 2022	\$59,000.00
Year Five: 1 October 2022 – 31 September 2023	\$59,000.00
<hr/>	
	Subtotal: \$295,000.00
	Taxes \$0.00
	Total: \$295,000.00

t (+1) 415-513-1026 Kanopy LLC, EIN 99-0377373
Kanopy, Level 4, 781 Beach St, San Francisco 94109 USA
www.kanopy.com



Kanopy
781 Beach Street, Suite 410
San Francisco, CA 94109

Dear Austin Public Library:

RE: Kanopy Video Proposal

This letter outlines a proposal for your library to deploy Kanopy's video streaming solution.

ABOUT KANOPY

Kanopy is a video streaming platform for libraries serving communities with one of the largest and finest collections of films in the world and a powerful user experience on par with the best consumer solutions. Globally, online video is the fastest growing resource for entertainment and education, and with Kanopy, public libraries have the opportunity to offer patrons a convenient solution for accessing thousands of films that not only entertain, but that also educate, enlighten, and inspire.

Rebecca Near, Collection Services Coordinator at Grand Rapids Public Library notes, "*Kanopy's range of independent, foreign language, classic, and documentary films is tremendous and creates a wonderful complement to our physical collection.*" Lynda Perez, Senior Librarian of New York Public Library notes, "*I think we need to have things like this in order to keep up. Having a service like this makes us more relevant.*"¹ The New York Times calls Kanopy "*the awe-inspiring streaming gold mine... a garden of cinematic delight*" and asks "*why do libraries offer Kanopy? Because libraries are awesome, that's why?*"² While Forbes describes Kanopy as "*one of the most unique and compelling film collections in the world.*"

Some of the key features of Kanopy -

1) Over 30,000 unique and popular films that are entertaining and educational

Kanopy's collection features over 30,000 films – one of the largest film databases for libraries globally. Our films come from over 1,000 top producers such as Janus Collection (Criterion Collection), The Great Courses, PBS, Kino Lorber, Samuel Goldwyn, Harold Lloyd, and more. Over 60% of Kanopy's content is exclusive and only available on Kanopy. Kanopy sees many new releases launched daily (approx. 300-500 per month), ensuring the collection is fresh with current content. You can browse our collection online at www.kanopy.com.

2) Promoting Lifelong Learning and Child Development

Kanopy's motto is "*Thoughtful Entertainment*" and we focus on major films that do not only *entertain*, but also *educate, enlighten and inspire*. We do this to ensure that our solution strongly aligns to and contributes to the missions of libraries. The mission of New York Public Library, for example, is "*to inspire lifelong learning, advance knowledge, and strengthen our communities*" – an objective into which our content strategy dovetails.

This goal guides the incredible breadth and diversity of our collection. Some key film genres include:

- **Documentaries:** Over 15,000 documentaries on all topics from the environment to race and social justice

¹ Source: <http://www.riverdalepress.com/stories/libraries-add-free-streaming-service-63293>

² Source: <https://www.nytimes.com/2017/09/01/movies/kanopy-streaming-service.html> and <https://www.nytimes.com/2017/08/24/watching/kanopy-criterion-collection-library-card.html>

- *Foreign Films*: over 2,000 foreign films in 180 languages to ensure libraries are able to service their diverse communities (for over 20% of the population, English is a second language)
- *Movies*: Over 9,000 movies including a great selection of early cinema (e.g. Charlie Chaplin, 'Bicycle Thieves'), indie film (e.g. '2 Days in Paris', 'Hunt for the Wilderpeople'), and cult classics (e.g. 'Boondock Saints', 'Donnie Darko')
- *Learning cinema*: including the Great Courses collection, over 1,500 K-12 curriculum films, career development films, and lifestyle content (yoga, cooking, etc.)
- *Local content*: the collection's breadth provides access to a wide array of films from local filmmakers and on issues of local and regional relevance

We also have a dedicated "Kids Portal" for children, highlighting thousands of educational films that drive early learning and development. Through our exclusive partnership with Common Sense Media, the content on this platform meets the highest standards of review.

3) Working with over 4,000 libraries

- We work with over 4,000 libraries across the globe and over 3,000 in North America including larger systems (Los Angeles, New York, Brooklyn, Seattle, Harris County, New Orleans, Cincinnati, San Francisco, Baltimore, King County, etc.) as well as many smaller libraries (our smallest library has a population of under 500 people)
- You can see Los Angeles' profile for Kanopy here (<http://www.lapl.org/kanopy>) and the LA Weekly rated Kanopy the best video solution in their library - "*LA public library offers two services for streaming films. The better one is Kanopy*".³
- We are the first dedicated video streaming solution launched at New York, Brooklyn, Queens, and many more of the major public libraries. IndieWire calls Kanopy NYPL's "*best kept secret*".⁴
- In a 2017 Library Journal Survey of over 300 libraries, Kanopy was rated "*the most valuable streaming platform*".⁵

4) Supporting Group Showing Rights

Films come with group showing rights to ensure that the library can meet some of the most important use cases for the films, including library and community programming events. We also support content for schools with a breadth of content that is K-12 curriculum aligned for classroom showings.

5) Most Powerful Technology

Kanopy incorporates the most powerful streaming technologies and was voted Best Database for 2016 by the Library Journal:

- **Apps**: Kanopy supports more apps than any library vendor in the World and is the only platform globally with a Roku app (the #1 TV connected device in North America). We support apps for all other major devices such as IOS (iPad, iPhone), Android (Galaxy), Apple TV, AirPlay, Chromecast, etc.
- **Accessibility**: Kanopy is the only platform to meet full accessibility standards – (1) all films have captions and transcripts; (2) we are compatible with visual impairment technologies; and (3) we provide special disability settings for patrons.⁶ Over 18% of the population suffers from hearing and visual impairments
- **Features**: Patrons also have "power user" features to engage with films on a heightened level (e.g. tools to create clips / playlists and watchlists, embed films, field recommendations and more)

³ Source: <http://www.laweekly.com/news/six-free-things-you-get-with-your-los-angeles-public-library-card-8081000>

⁴ Source: <http://www.indiewire.com/2017/08/kanopy-free-streaming-netflix-alternative-library-card-criterion-collection-1201864193/>

⁵ Source: <http://li.libraryjournal.com/2017/09/academic-libraries/academic-mainstream-streaming-video/#>

⁶ For Kanopy's accessibility policy, see: <http://help.kanopystreaming.com/hc/en-us/articles/210691557-What-is-Kanopy-s-position-on-accessibility->

6) Great Administrative Features

Kanopy provides libraries with free marc records for all films and a powerful Dashboard to log into anytime to monitor live usage, download over 30 usage reports, and manage access and acquisitions.

RELEVANCY OF KANOPI TO YOUR LIBRARY

There has been some evidence of the demand and relevancy that exists for our solution at your library:

1) Patron Inquiries:

This past year, we have fielded a number of inquiries from members of your community on our website and via social media, inquiring about accessing films and if we worked with your library.

The inquiries point to:

- The diversity of the interest and demand for Kanopy (different patrons seeking very different films for different objectives); and
- The demand for Kanopy not only for entertainment reasons but for education, research, teaching, showings, personal interest and other “*thoughtful*” reasons

2) Your mission:

The mission of your library is to “be a dynamic creative center” with a focus on 3 commitments

- *Providing easy access to books and information*
- *Equal access*
- *Diversity*

Kanopy’s motto of “*Thoughtful Entertainment*” ensures our content is focused on films that meet your mission as a library – films that engage, educate, enlighten, inspire, and excite, not just entertain. The nature of the inquiries fielded from your community to date firmly indicates the connection between our films and your mission – patrons seeking access to content for personal development, learning, teaching, etc. In particular, we endeavor to:

- Profile films that encourage learning, personal development and the exploration and exchange of ideas
- Encourage community connectedness, social events and discussion through the inclusion of group showing rights for films (supporting festivals, programming, school classrooms, etc.)
- Support diversity with our huge breadth of content on all topics, devotion to accessibility for all, and large collection of foreign language and ESL titles

3) Group Rights:

Kanopy supports the rights to employ films in programming events, which helps libraries to better engage the community and maintain social relevancy through movie nights, educational events, topical discussion groups, film festivals, and other group events, etc. These rights are also valuable to teachers at public schools and local community organizations that might hope to use films in classes and training and social events.

4) Our Experience:

We work with over 4,000 libraries leading library systems in the country (e.g. New York, Brooklyn, Queens, Seattle, Westchester, King County, New Orleans, San Francisco, Philadelphia, Cincinnati, Phoenix, Birmingham, Kansas City, Austin, among others).

We also work with most academic and public libraries in your region.

We work with all major academic libraries across your State and a strong element of Kanopy demand through the libraries is from graduating students seeking continued access for ongoing learning and enjoyment.

We consistently see strong feedback on Kanopy from patrons. For example, some sample feedback from real patrons from your library from the last month:

- John D. - *"I would definitely recommend Kanopy because of the diversity of video and the curating of both domestic and foreign films that have some historical perspective."*
- Markus A. - *"Kanopy is the best thing since the early internet. Kanopy is the only streaming service worth watching."*
- Bert M. - *"We are thrilled to discover this service is available through our local library!"*
- Upekshila M. - *"Kanopy has been a great addition to my movie streaming platforms. Kanopy is easy to use and works really well with chromecast so I can watch it on a bigger screen, which I love. I have actually started recommending Kanopy to my friends since this service has a huge selection of foreign movies and movies that would not be on streaming platforms like Netflix."*
- Ken N. - *"I love the Kanopy experience. As an artist and creative person, I have been enjoying my continued research and appreciation of the artist that I have followed my entire life. Through Kanopy I have been able to search the people and topics that are pertinent to me on my journey. I have loved every video I had been able to watch since finding your site."*

5) Local Films and Filmmakers:

The breadth of our database means we have many films from local filmmakers and of local relevance. For example, we profile over 1,000 films that feature, and over 100 films from filmmakers based in, your home state.

Libraries have the ability on Kanopy to uniquely profile films of local relevance (for example – LA Public library has created a unique link to *"Films about Los Angeles"* on Kanopy - <http://www.lapl.org/kanopy> - and San Francisco has a featured collection on their city - <https://www.kanopy.com/category/tags/films-about-san-francisco-bay-area>).

OUR MODEL

Kanopy operates a proven and high value, low-cost usage-driven model for public libraries that is the only usage-based model ever launched at major library systems - such as New York, District of Columbia, Brooklyn, Queens, Santa Clara, Denver, etc.

Our model works as follows:

- **Free set up and design control:**
 - You design your collection – select all or the exact films you wish to provide access for and customize your user website
 - You design your program – set any budget, set any user caps, decide if you wish to deposit funds or pay via monthly invoices
 - No platform fees or upfront payments or commitments
- **A usage driven payment model:**
 - We only charge for user "play credits", which are incurred when users actually watch – we do not charge for borrows or checkouts
 - A play credit is a 3 day rental of the film (allowing the patron to watch the film unlimited times within 72 hours)
 - Our play credits have a maximum charge of \$2, which is 40% below average and includes the group showing rights
 - We invoice you monthly for the play credits incurred that month
- **Full control and flexibility:**
 - You can monitor usage and budget live from your sophisticated Admin Dashboard
 - You have full control throughout the year to adapt and change your program anytime (no annual lock in) – turn off or change your caps or content selection

-
- o Should you wish to turn off or pause your PPU program at any time during the year – we can work with you on content options for that period

Why does our PPU model make sense for libraries?

- 1) No risk and redundant fees: no annual contracts, no set up or platform fees, and no upfront payments – you simply launch your program and only pay for value and can adapt anytime
- 2) Guaranteed value and lowest cost: a max cost per use (not circulation) of \$2 which is over 50% below all other platforms including home video, and also includes group showing rights for programming
- 3) Breadth of content: Open access to over 30,000 diverse films and get immediate access to all new releases (500 per month) to ensure you can meet the diverse and changing demand – especially for the long tail content which is difficult to deliver to the community
- 4) A model that makes sense for film: because 1) full length and “long-tail” films and documentaries are geared toward broad and methodical usage (vis-à-vis audiobook resources); and 2) it is the only model that allows us to unlock film rights for most films (transactional film rights (TVOD) are much more readily available than subscription (SVOD) rights)
- 5) Limited overlap: our content is unique (60% exclusive and much more available nowhere else) so no or limited overlap with existing holdings in the library
- 6) Strong community outcomes: our database boasts the largest collection of foreign and documentary films globally to ensure we drive learning, not just entertainment, outcomes and the programming rights support effective community events
- 7) Patrons love it: the breadth of content including popular and long tail content with no waiting lines or confusion

SUGGESTED PROPOSAL

You can design a program with Kanopy to meet your exact content (you can design your own collection), budget (you can set your own fixed budget) and value objectives (our program is entirely dependent on delivering value to your community and library). Demand is typically driven by (1) your program decisions (user caps, content selections), (2) the size of your population, (3) their appetite for our content, and (4) your approach to rolling out the program.

We can help to ensure to craft the right program for your library. Generally speaking, based on average benchmarks, a library of your size and profile rolling out our program with the full Kanopy database might expect an annual budget of approximately:

- 559,000 per year – monthly user cap of 5

Please let me know if you have any questions or feedback on this.

Kind Regards,



Shannon Spurlock
Director of Sales
shannon.spurlock@kanopy.com

EXHIBIT B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

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

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

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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

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

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

Sanctions:

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

Term:

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

Dated this October day of 30, 2018

CONTRACTOR Kanopy

Authorized
Signature



Title

Sales Director



City of Austin Purchasing Office

Sole Source Certificate of Exemption

DATE: August 30, 2018

DEPT: Austin Public Library

TO: Purchasing Officer or Designee

FROM: Monica McClure

PHONE: 512-974-9619

PURCHASING POC: Elisa Folco

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☐ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☒ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☒ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
- What is the municipal purpose that this procurement addresses or furthers?
- Why is the procurement a sole source?
- Has this procurement or a similar procurement been competitively solicited in the past?
- Why is the vendor the only viable solution?
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
- Is there a concern regarding warranty, compatibility, and/or routine safety?
- Are there territorial or geographic restrictions for the product distribution and sale?
- Are there other resellers, distributors, or dealers in the market?
- What other suppliers or products/services were considered?
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
- Is there a way to retrofit another brand? What is this estimated associated cost?
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
- **Prices were determined to be reasonable based on the following (select all that apply):**

- ☒ Prices are the same or similar to current City contract.

Notes: At a minimum, note the City of Austin contract number and title

- ☐ Prices are the same or similar to current contract with another government.

Notes: At a minimum, note the contract number, title and government that created the contract

- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.

Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date)

- ☐ Prices are established by law or regulation.

Notes: At a minimum, note the legal or regulatory reference that established the prices

- ☐ Other means of determining Price Reasonableness.

Notes: Describe any other source that was used to establish Price Reasonableness

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Place holder for department
sole source description area

Kanopy provides a video streaming database product that is currently enjoyed by many Austin Public Library patrons. Austin Public Library began a trial period with Kanopy in October 2017 which has proven successful and the Library would like to continue its contractual relationship with this vendor. The previous year's procurement was also based upon a sole source exemption justification.

Kanopy's collection is the largest database of popular independent, foreign and cinematic films available for public libraries featuring over 30,000 titles. Kanopy is the exclusive streaming distributor for many top producers and over 60% of films on Kanopy are available exclusively to public libraries.

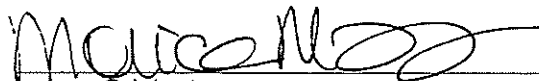
The Virtual Library is a collection of 3rd-party services that provide all-online eBooks, audiobooks, magazines, movies, television shows, music albums, learning and research tools to Austin Public Library customers. While some of our vendors provide content in several formats, Kanopy provides streaming video only. In less than 12 months, Kanopy's usage has more than doubled. In October 2017, Kanopy films were viewed 1,059 times. In July 2018, its films had 2,400 views. It is our most popular streaming video service, and we anticipate increased usage as more customers discover it.

Kanopy fills an information need for high-quality documentaries, world cinema, classics, film festival entries, and award winners. Suppliers include Janus (Criterion Collection), The Great Courses, PBS, and the BBC. Kanopy's films can be accessed on desktops, laptops, mobile devices, and streamed on TVs using Roku, Apple TV, and Chromecast. In May 2018, Kanopy introduced Kanopy Kids, a collection of educational and leisure films and TV shows for youth up to age 12.

We were alerted to Kanopy after several Austin residents contacted APL and the vendor to request that we offer a subscription. We evaluated the platform and content, and it fit our criteria for a Virtual Library service. Kanopy benefits our users by providing quality streaming video for education, career development, business skills, lifelong learning, and leisure viewing.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
- ☒ Scope of Work or Statement of Work or Vendor Proposal
 - ☒ Vendor's Quote
 - ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
 - ☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why
4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:
- (Vendor Name): Kanopy_____ for
- (Description of Procurement): ___ Video Streaming _____
5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:
- ☐ This is a one-time request for \$ _____
- ☒ This is a multi-term contract request for 36 (# months for base term) in the amount of \$ 177,000 with 2-12 month renewal options (# of renewal options) for \$ 118,000 each for a total contract amount of \$ 295,000.

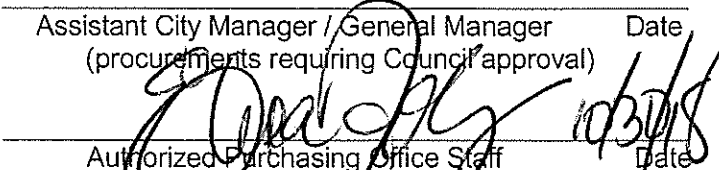
Recommended
Certification

 8/30/2010
Originator Date

Approved
Certification

 8/30/18
Department Director or designee Date

Purchasing Office
Review

 10/30/18
Assistant City Manager / General Manager Date
(procurements requiring Council approval)
Authorized Purchasing Office Staff Date

Purchasing Office
Management Review

Purchasing Officer or designee Date
(procurements requiring Council approval)