

## **Interlocal Agreement For Shared Digital Library Services**

WHEREAS, this Interlocal Cooperation Agreement for Library Services ("Agreement") is made and entered into by and between the City of Arlington ("Arlington"), the City of Grand Prairie ("Grand Prairie"), the City of Kennedale ("Kennedale") and the City of Mansfield ("Mansfield"). The Agreement covers the purchase of software, digital library services and professional services, as well as ongoing library services as specified below; and

WHEREAS, the cities of Arlington, Grand Prairie, Kennedale and Mansfield have joined together to share in the provision of digital library services consisting of downloadable e-books and e-audiobooks, online educational services and online research database services through a common online portal for residents of Arlington, Grand Prairie, Kennedale and Mansfield; and

WHEREAS, the cities of Grand Prairie, Kennedale and Mansfield agree to allow the City of Arlington to act as fiscal agent for the purchase of the resources described above and to invoice Grand Prairie, Kennedale and Mansfield for their agreed share of the cost; and

WHEREAS, pursuant to authority granted by the Interlocal Cooperation Act §§ 791.001 et. Seq. of the Texas Government Code, the governing bodies of Arlington, Grand Prairie, Kennedale and Mansfield wish to enter into an agreement for library services, and further find that this contract is in the common interest of both parties; and

WHEREAS, ARLINGTON, GRAND PRAIRIE, KENNEDALE and MANSFIELD in paying for the performance of governmental functions or in performing such governmental functions pursuant to the Interlocal Agreement shall make payments therefore only from current revenues legally available to such party; and

WHEREAS, the governing bodies of each entity believes that this AGREEMENT is necessary for the benefit of the public and that each party had the legal authority to provide the governmental function which is the subject of the Interlocal Agreement.

NOW THEREFORE, the parties agree as follows:

### **1. PURPOSE AND SCOPE:**

The purpose of this Agreement is to promote the efficient provision of library services in public libraries in the communities of Arlington, Grand Prairie, Kennedale and Mansfield. Through an FY 2014 LSTA Cooperation grant received by the City of Arlington, a common portal will be created to offer citizens access to e-books, e-audiobooks, online educational services and online research databases. A professional services contract for design and development of the portal will be procured by Arlington using the FY 2014 LSTA Cooperation. Staff from all libraries will participate in the creative process and will be provided information in order to direct citizens to the site in order

to access resources. Arlington will also provide Grand Prairie, Mansfield and Kennedale with certain associated training services and administrative assistance.

## 2. TERM:

This Agreement shall commence on the date of its execution by both parties ("Effective Date") and remain in effect for one (1) year from the date of the Effective Date. After one year, the agreement shall automatically renew for successive one (1) year terms ("Renewal Period") and shall continue in full force and effect unless terminated by either party upon written notice. Such notice shall be given no later than ninety (90) days prior to the end of the renewal period.

## 3. SERVICES PROVIDED.

### 3.1 Use of System

Arlington, Grand Prairie, Mansfield and Kennedale shall enjoy full use online portal in order to provide access to digital resources subscribed to jointly, or subscribed to singly. Arlington is ultimately responsible for the borrower, holdings and other System databases, and reserves the right to establish and implement standards and practices that will benefit all participants.

Grand Prairie, Mansfield and Kennedale will be responsible for informing Arlington of any changes in subscription and access status to resources available to their citizens only.

### 3.2. Telecommunications Access to System

The online portal will be hosted remotely and all libraries will have equal administrative access to the system. Any changes in the hosting services will be mutually agreed to by all parties.

### 3.3 System Customization.

Arlington will have primary responsibility for portal design and functionality after the initial professional services contract for portal creation expires. Arlington shall make all reasonable efforts to customize the portal to support Grand Prairie's, Mansfield's and Kennedale's special requirements. Arlington reserves the right to pass on any related vendor charges and to bill Grand Prairie, Kennedale or Mansfield for customization beyond that normally required for operation of the System. Such customization will be provided on a schedule mutually agreed to in writing by all parties.

### 3.4 System Maintenance and Upgrades

Grand Prairie, Mansfield and Kennedale are solely responsible for providing, maintaining, and updating their own local hardware and software necessary for use of the portal as well as maintaining their connectivity components for access into the hosting site. The also includes hardware/software upgrades required due to upgrades, new releases and the implementation of

additional optional features. Arlington will notify Grand Prairie, Mansfield and Kennedale of local hardware and software upgrade requirements as far in advance as possible.

3.5. Hosting Support. An annual contract for hosting services will be purchased by Arlington, as fiscal agent, and an equal share of the contract will be paid by each of the four (4) libraries.

#### 4. SOFTWARE AND EQUIPMENT ACQUISITION

4.1 Software Purchases/Maintenance. The following items for Grand Prairie's, Kennedale's and Mansfield's use are projected to be purchased using LSTA Cooperation Grant funding received by Arlington during FY 2014. All software licenses will be owned by the library indicated below.

EZ Proxy – Grand Prairie	\$2,980
EZ Proxy - Kennedale	\$1,540
EZ Proxy - Mansfield	Already owns

4.2 Professional services and site hosting will be purchased using LSTA Library Cooperation Grant funding received by Arlington during FY 2014.

Portal design & development	\$30,000
Portal hosting	\$ 512

4.3 Digital services acquisitions & licensing. As part of consideration, and to further the purpose of this Agreement, Arlington shall act as fiscal agent for Grand Prairie, Kennedale and Mansfield to manage the purchase of digital library services that would be accessible to library card holders of all four cities. Cost share percentages for each service will be mutually agreed upon by all four cities and written notice provided and accepted by all parties regarding their share of the costs prior to any purchase order being issued. Arlington shall provide invoices for Grand Prairie, Kennedale and Mansfield to reimburse Arlington for their cost-share.

#### 5. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

5.1 Grand Prairie, Mansfield and Kennedale acknowledge that Arlington licenses its System from a third-party System Vendor. In addition Mansfield and Kennedale acknowledge that operation of the System by Arlington is largely dependent on software license agreements and other documents required by the System Vendor or a respective manufacturer. All contracts, purchase agreements, leases, software licenses and other documents related to the System ("System Documents") are public documents on file in the City Secretary's Office of Arlington, and are available for inspection and copying by Mansfield or Kennedale during normal business hours and are incorporated herein by reference for all purposes.

**5.2 Grand Prairie, Mansfield and Kennedale understands and agrees that Arlington does not grant Grand Prairie, Mansfield and Kennedale any right that is greater than or different from any right that Arlington may have under the system documents. In addition, Grand Prairie, Mansfield and Kennedale understands and agrees that Arlington shall not be liable to Grand Prairie, Mansfield and Kennedale for any special, direct, indirect, incidental or consequential damages of any sort, including without limitation, damages to property or for personal injury, death, loss of profits or savings, loss of use or any other damages, whether based on strict liability or negligence and whether resulting from use of the system or otherwise, except for direct, specific damages for personal injury or property damage only to the extent caused by Arlington's gross negligence or willful misconduct. The entities do not intend nor do the entities waive any of its immunities under law.**

**5.3 Grand Prairie, Mansfield and Kennedale hereby acknowledges and represents that it has independently determined, without reliance on any representations that may or may not have been made by Arlington, that the size, design, capacity of the system and the manufacturer and supplier are satisfactory to Grand Prairie, Mansfield and Kennedale in all respects and for all intended purposes. Arlington has not made and does not hereby make any representation, warranty or covenant, written or oral, statutory, express or implied, as to any matter whatsoever, including, without limitation, the design, quality, capacity, material, workmanship, operation, condition, merchantability or fitness for a particular purpose, hidden or latent defect of the system or any portion thereof, or as to any patent, copyright, or trademark infringement. As to Arlington, Grand Prairie, Mansfield and Kennedale hereby waives any claim it may have regarding, without limitation, the design, capacity, material, workmanship, operation, condition, merchantability or fitness for a particular purpose, hidden or latent defect of the system or any portion thereof, and any claim it may have as to any patent, copyright or trademark infringement.**

## **6. TERMINATION**

**6.1 By Either Party. Any party may terminate this Agreement in accordance with Section 2 above. Grand Prairie, Mansfield and Kennedale shall as applicable pay Arlington all compensation due hereunder through the effective date of termination. No advance payments to Arlington received prior to the effective date of termination shall be refunded. Within ninety (90) days of the effective date of termination, and at Grand Prairie's, Mansfield's and Kennedale's sole cost and expense, Arlington will provide Grand Prairie, Mansfield and Kennedale with an industry-standard copy of Grand Prairie's, Mansfield's and Kennedale's database on a machine-readable tape in MARC format or such other format reasonable requested by Mansfield and available to Arlington.**

6.2. Default. Grand Prairie, Mansfield and Kennedale shall be in default under this Agreement if any party as applicable (i) fails to pay any compensation or other amounts payable hereunder for a period of ten (10) days or more (unless Arlington has given Grand Prairie, Mansfield or Kennedale written consent for additional time to pay such compensation or other amounts) following receipt by Mansfield of written notice thereof or (ii) takes any action that materially prevents Arlington from performing its duties and obligations hereunder (such as, for illustrative purposes only, restricting access for installation of the System) and such condition continues for a period of thirty (30) days or more following receipt by Mansfield of written notice thereof (collectively an “Event of Default”)

6.3. Termination of System Documents. If any of the System Documents are terminated and such termination materially prevents Arlington from performance under this Agreement, Arlington may immediately terminate this Agreement upon provision of written notice to Mansfield and Kennedale.

## 7. MISCELLANEOUS

7.1 Ownership of Data Base. Both Arlington, Grand Prairie, Mansfield and Kennedale shall at all times retain ownership and use of their own database, including patron files and records

7.2 No Waiver. The failure of either party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party’s right to insist upon appropriate performance or to assert any such right on any future occasion.

7.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

7.4 Force Majeure. The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems or existing contractual obligations directly related to the subject matter of this agreement.

7.5 Venue and Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Tarrant, County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division.

7.6 System Documents Control. In the event of any conflict between this Agreement and the System Documents, the System Documents shall control.

7.7 Notices. Grand Prairie, Mansfield and Kennedale shall provide Arlington with the name, direct phone number, facsimile number, and e-mail address of the Grand Prairie, Mansfield and Kennedale employees who will be responsible contacts for all issues involving this Agreement.

7.8 Entirety of Agreement. This written instrument, including all Exhibits attached herto and any documents incorporated herein by reference, contains the entire understanding and agreement between Arlington, Grand Prairie, Kennedale and Mansfield as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement. This Agreement may not be amended unless set forth in writing and signed by both parties.

7.9 Assignment. This Agreement may not be assigned by either party

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**SEPARATE SIGNATURE PAGE OF THE CITIES TO FOLLOW**

**CITY OF GRAND PRAIRIE, TEXAS**

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_, City Attorney

By: \_\_\_\_\_

**CITY OF MANSFIELD, TEXAS**

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_, City Attorney

By: \_\_\_\_\_



**CITY OF KENNEDALE, TEXAS**

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_, City Attorney

By: \_\_\_\_\_

**CITY OF ARLINGTON, TEXAS**

By: \_\_\_\_\_

\_\_\_\_\_  
Deputy City Manager

ATTEST:

\_\_\_\_\_  
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:  
JAY DOEGEY, City Attorney

By: \_\_\_\_\_