

Interlocal Agreement For Shared 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 Kennedale ("Kennedale") and the City of Mansfield ("Mansfield"). The Agreement covers the purchase of equipment and software, as well as ongoing library services as specified below; and

WHEREAS, the City of Arlington operates an automated library system ("System") that uses technology specifically designed by GIS Information Systems, Inc. dba Polaris Library Systems ("Polaris") for the efficient circulation, cataloging, acquisition and processing of library materials, maintenance of patron accounts and access to online databases and other digital materials; and

WHEREAS, the cities of Arlington, Kennedale and Mansfield have joined together to share an automated system and to share physical and digital library collection resources for residents of Arlington, Kennedale and Mansfield; 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, 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, 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, Kennedale and Mansfield. A host computer located at Arlington's Central Library is the base of all operations related to the System. Subject to and in accordance with this Agreement, Mansfield Public Library and Kennedale Public Library will receive access and be linked to the System to the extent provided in Exhibit "A" which is attached hereto and hereby made a part of this Agreement for all purposes herein. Software licenses, hardware and services shall be purchased by Arlington using the FY 2011 LSTA Cooperation grant for Mansfield's use as specified in Section 4 below. Arlington will also provide Mansfield and Kennedale with

certain associated training services and administrative assistance. Mansfield and Kennedale shall execute any Contract Addendums necessary with Polaris for purchase and maintenance of all related hardware and software used by their libraries. Mansfield and Kennedale shall compensate Arlington for training services, administrative assistance and courier service as provided in this Agreement.

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

Mansfield and Kennedale shall enjoy full use of the modules and features available on the base System, including Acquisitions, Cataloging, Circulation, Online Public Access, Offline Circulation, Reports, Serials, Telephone Notification, and any others that may be added during subsequent System upgrades. Arlington is ultimately responsible for the quality and accuracy of the borrower, holdings and other System databases, and reserves the right to establish and implement standards and practices that will benefit all participants.

Mansfield and Kennedale shall enjoy full use of any new System services and features covered by its annual maintenance payments to Polaris. Mansfield and Kennedale will have the option to purchase new services and features that are not included with the base system but will consult with Arlington before doing so to determine if additional labor will be necessary to maintain the new module.

Mansfield and Kennedale will be responsible for carrying out routine operations of the various System modules. Polaris will provide training as specified in Section X to Kennedale staff. Arlington will provide necessary ongoing training on other system modules so that Mansfield and Kennedale staff can successfully carry out the operations themselves.

3.2. Telecommunications Access to System

Arlington shall maintain all telecommunications hardware, software, wiring and other equipment ("Telecommunications Equipment") at Arlington's public library necessary to provide Mansfield and Kennedale with a secure connection into and out of the System. Mansfield and Kennedale shall install and maintain any equipment needed for their internal operations within their respective

libraries. Any changes in the manner in which Mansfield or Kennedale connects to the Polaris server will be mutually agreed to by all parties.

3.3 System Customization.

Arlington shall make all reasonable efforts to customize the System to support Mansfield's and Kennedale's special requirements, so long as such customization does not interfere with Arlington's use and enjoyment of the System. Arlington reserves the right to pass on any related System Vendor charges and to bill 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

Polaris will provide maintenance of system software and Arlington will provide maintenance and support for equipment located in Arlington. Arlington will install System patches, updates and new version releases that are made available by Polaris. Such updates and releases will be installed when Arlington deems them to be stable and when their installation is beneficial to the libraries

System patches, updates, and new releases are generally included as part of Mansfield's and Kennedale's annual maintenance costs. In the event there are additional software or hardware costs associated with a new release, Arlington will purchase the necessary components. Mansfield and Kennedale will reimburse Arlington for its share of the additional costs on a mutually agreed upon schedule.

If Mansfield or Kennedale requests access to an optional System enhancement that is not provided as part of routine System upgrades and new releases, the requesting library will reimburse Arlington for the costs associated with installing and maintaining these upgrades.

Mansfield and Kennedale are solely responsible for providing, maintaining, and updating their own local hardware and software necessary for use of the System as well as maintaining their connectivity components for access into the Arlington server. The also includes hardware/software upgrades required due to System upgrades, new releases and the implementation of additional optional System features. Arlington will notify Mansfield and Kennedale of local hardware and software upgrade requirements as far in advance as possible.

3.5. Service Support. Mansfield and Kennedale shall maintain an annual support and maintenance contract with Polaris that covers basic software support and problem resolution as specified in the Agreement dated August 9th, 1999 between the City of Arlington and Gaylord Brothers. Neither Arlington nor Polaris shall guarantee services for circuit disruptions outside the control of Arlington or Polaris.

3.6. Courier Services

Arlington shall provide Courier Services on a partial cost-recovery basis to deliver and return materials borrowed. The Courier schedule is developed by mutual agreement. Charges based on courier time and mileage are established prior to the beginning of each fiscal year and agreed to in writing each year. Arlington is not responsible for accidental loss or damage to materials shipped through the Courier Service or for missed or delayed deliveries due to mechanical failures or road conditions. Invoices will be sent by Arlington to Mansfield and Kennedale on a quarterly basis to recover courier costs.

4. SOFTWARE AND EQUIPMENT ACQUISITION

4.1 Software Purchases/Maintenance. Kennedale will purchase the following items in order to participate in the System. All software licenses will be owned by Kennedale.

4 Polaris Staff Client Licenses @\$750 ea.	\$3,000
Unlimited PowerPAC/Internet License	N/C
Polaris ILS Software Materials	N/C
Annual maintenance (4 staff client licenses)	\$540

Mansfield has previously purchased software licenses and they will be owned by Mansfield.

4.2 Data Migration & Installation Services. Database migration services provided by Polaris will be purchased by Kennedale. Ownership of Kennedale's data will remain with Kennedale. Kennedale accepts sole responsibility for the extraction of data from its current system.

Data Migration: (18,356 Bibliographic records, 19,442 item records, 6547 patron records)	\$5,000
De-duplication of MARC records with APL's database	\$2,500
Polaris training & implementation services (remote)	\$5,000

Mansfield has previously purchased database migration services and accepts sole responsibility for the extraction of data from its current system.

4.3 Training and Courier Services. Costs for courier services and Polaris system training and consultation services provided by Arlington to Kennedale during the FIRST year of service will be \$1,150 for 3 day per week courier service and \$3,417.00 for training and implementation. In future years of the agreement, the amount of compensation paid by Mansfield and Kennedale to Arlington for these services will be mutually agreed upon based on the previous year's labor and materials costs for maintaining the System and its services, as well as any relevant future projections.

- 4.4 Interlibrary loan and reciprocal borrowing. As part of consideration, and to further the purpose of this Agreement, Arlington, Kennedale and Mansfield shall provide interlibrary loan and reciprocal borrowing services to one another at no charge either to the parties or their customers. Reciprocal borrowing services shall be limited to residents of Arlington, Kennedale and Mansfield. Policies regarding interlibrary loan and reciprocal borrowing services are established through mutual agreement by all parties. Fines and fees received by one library that relate to items owned by another library within this agreement shall be paid to that library on a quarterly basis, with payment made within 30 days of the end of each quarter.

5. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

- 5.1 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 Mansfield and Kennedale understands and agrees that Arlington does not grant Mansfield and Kennedale any right that is greater than or different from any right that Arlington may have under the system documents. In addition, Mansfield and Kennedale understands and agrees that Arlington shall not be liable to 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 to waive nor do they waive any of its immunities under law.**

- 5.3 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 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, 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. Mansfield and Kennedale as applicable shall 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 Mansfield's and Kennedale's sole cost and expense, Arlington will provide Mansfield and Kennedale as applicable with an industry-standard copy of Mansfield's and Kennedale's database on a machine-readable tape in MARC format or such other format reasonable requested by Mansfield and Kennedale and available to Arlington.

6.2. Default. Mansfield or Kennedale shall be in default under this Agreement if either 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 Mansfield and Kennedale written consent for additional time to pay such compensation or other amounts) following receipt by Mansfield and Kennedale 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, Kennedale and Mansfield 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. Mansfield and Kennedale shall provide Arlington with the name, direct phone number, facsimile number, and e-mail address of the 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 hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between Arlington, 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 any party

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SEPARATE SIGNATURE PAGE OF EACH CITY TO FOLLOW

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: _____