



STAFF REPORT

ITEM NO. 3

DATE: DECEMBER 04, 2012
TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS
FROM: ROD FOSTER, CITY MANAGER *R. Foster*
PREPARED BY: BILL SMITH, DIRECTOR OF COMMUNITY SERVICES *B. Smith*
SUBJECT: AWARD OF PURCHASE – POLARIS LIBRARY SYSTEMS

RECOMMENDED ACTION

Staff recommends that the City Council: (1) waive competitive bidding for the reasons stated below and authorize a contract in the amount of \$45,943 for the first year with Polaris Library Systems for the purchase and installation of library automation services, technical support, staff training, and system hosting; (2) authorize the contract to extend for four (4) additional years with the “maintenance” amounts set forth in Schedule “D” (annual amounts of \$8,949 to \$9,778) and the Public Access Catalogue (PAC) subscription fee amount set forth in Schedule “E” (\$902 annually); and (3) authorize the City Manager to execute this contract on behalf of the City of Colton with any revisions recommended by the City Attorney.

GOAL STATEMENT

The proposed action will support the City’s goal to provide the Citizens of Colton with a high level of customer service, to maintain an updated network, and to provide access to information through modern, reliable technology.

BACKGROUND

For nearly 15 years the Colton Public Library has used a Sirsi/Dynix platform as its integrated circulation system. The circulation system catalogues materials, maintains a database of customer information, and facilitates the library borrowing process. Recently library staff has experienced troubles with the current platform, and increased difficulty in receiving vital technical support. The current system also has limited software capabilities compared to newer platforms, and performance upgrades have been extremely limited, despite a continuous rise in pricing for hosting and support.

Nearly all of our neighboring library systems (San Bernardino & Riverside Counties, among others) have migrated from the Sirsi/Dynix platform to another Integrated Lending System (ILS), namely Polaris Library Systems.

Polaris ILS is a system that coordinates, automates and seamlessly integrates a library's cataloging, acquisitions, serials control, and OPAC (Online Public Access Catalogue) functions. Polaris is dedicated to empowering libraries of all sizes and patronage through technology and efficiency. The Polaris circulation software system, as researched by Colton Public Library staff, exceeds expectations, fills our circulation and cataloging needs, meets library patron expectations, and should improve patron satisfaction. Given that most our neighbors have migrated to Polaris, doing so in Colton allows for greater library services throughout the region, and brings us closer to our goal of a unified, searchable library catalog and collective lending programs.

Listed below are features that the Polaris system provides that no other library platform vendors currently provide:

- Windows based, allowing for easier user access to information.
- Ability to integrate related systems, such as the "Envisionware" system currently used by the Library for public computer access.
- Ability to use multiple cataloging resources.
- All hardware hosted and managed by vendor.
- Enhanced public access to features, greatly enhancing the user experience at no additional charge. Examples include:
 - Text it
 - Map it
 - Auto suggest
 - Did you mean
 - Facet (dynamic limiting)
 - Ebook integration
 - Community Profiles for integration into library community
- More thoroughly integrated – i.e. the ability to work with data in multiple functions simultaneously.
- Real time updates – no need to wait for data to be processed overnight.
- Much greater reporting capabilities. Many standard reports available, as well as the ability to customize reports.
- Constant product development, enhancements, upgrades, and releases – Polaris recognized as industry leader for program development.
- Increased "noticing" capability. Notices available via email, general mail, telephone notification, or SMS texting. Notices also available in foreign languages.
- Increased accounting capabilities.
- Streamlines cataloging efforts by allowing for easy edit of bibliographic records.

Additionally, as noted above, the implementation of only the Polaris system provides the opportunity to merge Colton's database with surrounding library jurisdictions, unify regional library services, and build collective lending programs. This is due to the majority of

surrounding jurisdictions that currently utilize the Polaris system, including the following agencies.

- Big Bear Public Library
- Bloomington Public Library
- Calimesa Public Library
- Fontana Public Library
- Grand Terrace Public Library
- High Grove Public Library
- Highland Public Library
- Loma Linda Public Library
- Mentone Public Library
- Ontario Public Library
- Palm Springs Public Library
- Rialto Public Library
- Rubidoux Public Library
- Upland Public Library
- Yucaipa Public Library

ISSUES/ANALYSIS

Section 3.08.140(E) of the Colton Municipal Code provides a basis upon which to waive competitive bidding for this contract. Subsection (E) states, in part, that when it is determined that it is in the best interest of the City and its administrative operations to dispense with public bidding, the City may award the contract without following the formal or informal bidding processes. Based on staff's finding that Polaris Library Systems is the best system for the City, as well as the critical points of service listed above that are exclusively offered by Polaris Library Systems, staff is recommending that the City Council find that it is in the best interests of the City and its administrative operations to waive the formal bidding process and award a sole source contract to Polaris Library Systems.

The quote received from Polaris Library Systems includes, onsite training, implementation services, hosting services, data extraction/migration, data content for OPAC, and Polaris circulation software and support. The Polaris product offers many more components, upgrades, features, and hosting services, in comparison to the library's current ILS, and at a fraction of the cost.

The purchase of this system was discussed with the Library Board of Trustees during the budget preparation process for the current fiscal year. Specifically, the Board of Trustees discussed the item at its meetings of March 27, 2012, April 24, 2012, and June 22, 2012. With the concurrence of the Board of Trustees, staff included this item in the department budget request for the current fiscal year.

FISCAL IMPACTS

The total current year cost to bring this new system on-line is \$45,943, and this expenditure is included in the approved budget for the current fiscal year. The General Fund expenditure account is 100-6200-6250-3890. There will be a yearly cost in future budget years for maintenance (\$8,949 in year 2, \$9,217 in year 3, \$9,493 in year 4 and \$9,778 in year 5) and hosting (\$902 annually), and this cost will be accounted for within the library budget moving forward. This ongoing cost, for the foreseeable future, is expected to be significantly less than that which is budgeted for the current system.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

Contract for Hosted Services – Polaris Integrated Library System

POLARIS[®]

Integrated Library System

CONTRACT FOR HOSTED SERVICES

NOVEMBER 20TH, 2012

**Colton Public Library,
Colton, CA**

Polaris Library Systems
PO BOX 4903 • SYRACUSE, NY 13221-4903
1-800-272-3414 • FAX 1-315-457-5883 •
<http://www.polarislibrary.com>

THIS AGREEMENT, is made between GIS Information Systems., Inc. doing business as Polaris Library Systems, a wholly owned subsidiary of PLS Solutions, Inc. a New York corporation, with its principal place of business at 103 Commerce Boulevard, Liverpool, New York (herein after referred to as "Polaris"), and the Colton Public Library, 656 North 9th Street, Colton, CA 92324 (hereinafter referred to as "LIBRARY").

WITNESSETH:

WHEREAS, Polaris has developed a computerized system (hereinafter referred to as "Polaris ILS"®) consisting of hardware and software and related services, and the LIBRARY intends to purchase and/or license such hardware, software and related services at its location(s);

NOW, THEREFORE the parties mutually agree as follows:

1. Definitions

- 1.1 "One-Time Services" shall refer to the one-time services listed and set forth under Schedule B herein and which may be modified, added to, or replaced during the term of this Agreement.
- 1.2 "On-Going Hosted Services" shall refer to the on-going hosted services listed and set forth under Schedule B herein and which may be modified, added to, or replaced during the term of this Agreement.
- 1.3 "Polaris ILS Software" shall refer to all hosted and client applications proprietary to Polaris and provided by Polaris to the LIBRARY under this Agreement.
- 1.4 "Polaris ILS Hardware" shall refer to the hardware under the control and ownership of Polaris which is used to provide the Polaris ILS Software and On-Going Services; and which hardware may be modified, added to, or replaced during the term of this Agreement provided that the performance thereof is not thereby caused to degrade.
- 1.5 "Polaris ILS Software Materials" shall refer to any machine readable or printed material, including but not limited to documentation stored on CD, On-Line Help files and hard-copy guides, which are designated by Polaris as available under license to libraries who have licensed the Polaris ILS Software to which those materials relate.
- 1.6 "LIBRARY Equipment" shall refer to the hardware and software, including, but not limited to, those components that enable access to the Internet, which the LIBRARY is required to have in use in order to use and enable the Polaris ILS Software and On-Going Services to be provided in accordance with this Agreement, and which may be provided independently by the LIBRARY or which may be purchased by the LIBRARY as part of this Agreement.
- 1.7 "Network" shall refer to all communications hardware and software under the control and ownership of Polaris, and which may be modified, added to, or replaced during the term of this Agreement provided that the performance thereof is not thereby caused to degrade.
- 1.8 "System" shall refer to the Polaris ILS Hardware, Polaris ILS Software and Network as the same operate together in the provision of the On-Going Hosted Services.
- 1.9 "Live Date" is defined as the day on which the LIBRARY uses the System in a live, production mode for normal daily business, including searching the public access catalog and circulating materials. Warranty on software, subscription service costs and On-Going Hosted Services fee, are measured from this date.
- 1.10 "Third Party Software" means the object code of the software, including Software Materials and updates, that is owned by an entity other than Polaris and which is sublicensed by Polaris to the LIBRARY pursuant to the conditions of this Agreement.

2. Furnishing of Deliverables

Based on the statistics in Schedule A, which the LIBRARY agrees are reasonably correct as of the date of this Agreement, Polaris will provide Services as detailed in the following Schedules at the fees indicated in Schedule D:

| | |
|-------------|-------------------------------|
| Schedule B: | Services |
| Schedule C: | Polaris ILS Software |
| Schedule D: | Cost Summary |
| Schedule E: | Enhanced Data Content for PAC |
| Schedule F: | Hosted Environment |

3. Installation Schedule

3.1 Following the signing of this Agreement, the LIBRARY and Polaris will mutually agree on an Implementation Plan which shall include, but not be limited to, identification of all required tasks, a timeline of all required tasks, an indication of which party is responsible for completion of each task, and expected duration of each task. Upon completion of implementation, both parties shall mutually agree to a Live Date pursuant to Article 1.9 herein.

4. Term and Termination

4.1 This Agreement is effective upon final signature and for an initial term ending one (1) year from the Live Date. It shall then be renewed automatically for one-year periods unless the LIBRARY notifies Polaris of its intention not to renew at least ninety (90) days prior to the expiration of the original or any extended term.

4.2 If either party is considered to be in material breach of any of the terms and conditions of this Agreement, the aggrieved party shall give written notice thereof, including a reasonably detailed statement of the nature of such alleged breach, to the other party. The party considered to be in breach of this Agreement will have thirty (30) days after notice is received to cure such breach, or, if the breach cannot reasonably be cured within thirty (30) days, the party shall provide a written estimate of the time needed to cure such breach, shall commence to cure such breach within ten (10) days of notice from the aggrieved party and shall diligently continue to prosecute such cure to completion. If the party considered to be in breach fails to cure, commence to cure in timely manner, or diligently prosecute such cure to completion, the aggrieved party, at its option, shall be entitled to terminate this Agreement or suspend its performance under the Agreement for as long as the breach remains uncorrected, and avail itself of any and all remedies available under this Agreement, at law or in equity.

4.3 In the event either party becomes insolvent or voluntarily or involuntarily bankrupt or a receiver, assignee or other liquidating officer is appointed for all or substantially all of the business of either party, or if either party makes an assignment for the benefit of creditors, then the other party, at its option may immediately terminate this Agreement by notice to the offending party to that effect. In no event shall this Agreement be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise, and any such assignment or attempted assignment shall be void and in no event shall this Agreement or any rights or privileges hereunder be an asset of either party under any bankruptcy, insolvency or reorganization proceedings.

4.4 Subject to the conditions of Article 4.2, if this Agreement is suspended or terminated by the LIBRARY, whether for cause or convenience, then, effective upon the date of suspension or termination, the LIBRARY shall be relieved of further payment obligations, and shall be liable for payment only for those One-Time Services and On-Going Hosted Services satisfactorily received prior to the date of suspension or termination. If this Agreement is terminated, any pre-paid Software Maintenance and On-Going Hosted Services fees shall be refunded to the LIBRARY to the date of termination on a pro-rated basis. If this Agreement is mutually reinstated, then the LIBRARY shall reassume its payment obligations.

5. Return or Destruction of Licensed Software

If this Agreement is terminated, whether for cause or convenience, and the right to continued use of the

Polaris ILS Software and Software Materials under the conditions set forth herein is withdrawn then all Polaris ILS Software and Software Materials must be returned to Polaris, or if so requested in writing by Polaris, destroyed. Within one (1) month after the date of cessation or termination of any license granted hereunder, the LIBRARY will furnish to Polaris if requested, a certification that through the LIBRARY's best efforts and to the best of the LIBRARY's knowledge, the original and all copies of the Polaris ILS Software Materials received from Polaris or made in connection with such license have been returned or destroyed. This requirement will apply to all copies in any form, including translations, whether partial or complete, and whether or not modified or merged into other software materials as authorized herein.

6. Payment

- 6.1 Costs for the initial term of this Agreement are enumerated in Schedule D herein. Unless specified elsewhere in this Agreement, unit costs for Polaris Software and Services will be held at the quoted rate(s) for 1 year from the execution of this Agreement. Costs for additional Third Party software, hardware and services are subject to change and will be quoted at the then current rate.
- 6.2 Payment for deliverables shall be made on the Live Date. Subsequent payments will be made on the annual anniversary of the Live Date.
- 6.3 Payment in full on all invoices is due according to the terms of this Agreement or within 30 days of the invoice date, whichever date is later. Within twenty (20) days of receipt of the invoice, the LIBRARY may serve Polaris with written notice disputing any charge. If the dispute is not resolved within twenty-five (25) days of receipt of said written notice, then either party may file for arbitration.
- 6.4 In the event that payment is not made in full according to the specified terms, a service charge will be added to the undisputed balance after deducting all payments and credits. For any payment considered past due and undisputed by the LIBRARY, the LIBRARY agrees to pay interest at 1% per month (effective annual rate of 12%) on the unpaid balance or the highest rate permitted by law, whichever is less.
- 6.5 If failure to pay according to the terms of this Agreement causes this account to be assigned for collection, or causes legal action to be taken, the LIBRARY agrees to pay all costs of collection incurred by Polaris, including court costs and reasonable attorney fees, if the LIBRARY is found to be at fault.
- 6.6 In the event the Live Date is other than the first day of the month, the annual fee(s) will be pro-rated accordingly.
 - Any third party subscription service fee will be subject to review, and possible change, on an annual basis commencing one (1) year from the Live Date.
 - The software maintenance fee and On-Going Hosted Services fee are subject to change annually, such change commencing one (1) year from the Live Date and effective upon one hundred and twenty (120) days written notice to the LIBRARY.Following the initial term of this Agreement, and upon receipt of notification of any such change in the software maintenance fee and On-Going Hosted Services fee, the LIBRARY may, with ninety (90) days prior written notice, terminate this Agreement upon the effective date of such increase. Otherwise the new fee will become effective upon the date specified in the notice.
- 6.7 Polaris reserves the right to offer new goods and/or services at any time during the initial or extended term of this Agreement. Where such goods and/or services involve a one-time and/or an ongoing fee, Polaris shall provide the LIBRARY with ninety (90) days written notice of any such offer.
- 6.8 For Polaris Software purchased after the execution date of this Agreement but prior to the Live Date, a one year warranty will be provided. For Polaris Software purchased after the Live Date of this Agreement, maintenance charges will commence upon the installation date of the Software.

7. Licenses

- 7.1 Polaris hereby grants to the LIBRARY a non-transferable, non-exclusive, and non-sublicenseable license during the term of this Agreement to use the Polaris ILS Software, the Polaris ILS Software Materials, and any ancillary software, solely in conjunction with the On-Going Hosted Services as defined in this Agreement. It is declared that the LIBRARY shall have no right to use the same for any other purpose or at any other time.
- 7.2 No title to or ownership of the Polaris ILS Software or Polaris ILS Software Materials is transferred to the LIBRARY, and they remain the proprietary property of the owning entity.
- 7.3 All licensed Polaris ILS Software and Polaris ILS Software Materials contain Polaris proprietary information, use of which is limited by the licenses granted in this Agreement. The LIBRARY shall not allow the Polaris ILS Software or any portion thereof, to be reverse compiled, disassembled, or in any way altered. The LIBRARY shall not modify any licensed Polaris ILS Software in machine-readable form nor merge such Polaris ILS Software with other software programs. The LIBRARY will not disclose or otherwise make available, except as required by law, any licensed Polaris ILS Software Materials in any form to any third party except to the LIBRARY's employees, or to agents directly concerned with licensed use of said materials. The LIBRARY may customize Software Materials and on-line help files, but Polaris disclaims any responsibility for their maintenance.
- 7.4 Polaris may terminate all proprietary licenses granted hereunder and require return of the Polaris ILS Software Materials upon written notice to the LIBRARY if the LIBRARY fails to comply with these terms and conditions.

8. The LIBRARY's Responsibilities

- 8.1 The LIBRARY acknowledges the PC Workstation requirements set forth under Schedule F herein, and also assumes responsibility for purchasing, installing, configuring and maintaining all other on-premises hardware components necessary, including but not limited to:
- Firewall,
 - anti-virus software,
 - LIBRARY-specific network components, cabling and Internet connectivity including routers, switches, firewalls, cabling and telephone lines,
 - PC Workstations hardware and software, and maintenance including O/S software, software installation & updates and anti-virus,
 - Scanners,
 - Printers (e.g. Page, Label and Receipt Printers),
 - Other peripherals,
 - Uninterruptible Power Supplies,
 - Polaris add-on servers and third-party servers and equipment,
- The LIBRARY will also assume responsibility for determining, in consultation with Polaris, the viability of existing LIBRARY Equipment in conjunction with the System. Such consultation that Polaris may provide will be limited to commercially reasonable efforts.
- 8.2 The LIBRARY shall designate no more than two (2) key personnel to act as Polaris' sole point(s) of contact with the LIBRARY following execution of this Agreement.
- 8.3 The LIBRARY is responsible for providing and maintaining an Internet connection with sufficient bandwidth for reliable operation and support. This access must be sufficient, in Polaris' sole opinion, to satisfy any on-going warranties set forth under this Agreement. Failure by the LIBRARY to provide access via the Internet may result in unresolved performance issues and may void Polaris' obligations with respect to on-going warranties.

- 8.4 During the implementation process, the LIBRARY will provide Polaris with reliable remote access to their current system to facilitate the extraction of the LIBRARY's data, pursuant to the services provided under Schedule B herein.
- 8.5 The LIBRARY will accept responsibility for the data concerning the LIBRARY's system profile and system parameters that it has provided to Polaris based on guidelines for the profile and parameters set by Polaris. Polaris agrees to provide prompt written notice of any material discrepancy of which it becomes aware between data provided by the LIBRARY and data required for effective functioning of the Polaris Software. Polaris disclaims all responsibility for the use or function of the Polaris Software, or for the results obtained therefrom.
- 8.6 Pursuant to Article 8.1, the LIBRARY will accept responsibility for the installation, performance and maintenance of all third party hardware/software components on the Polaris ILS that are not supplied by Polaris under this Agreement. Polaris may provide consultation services or diagnostic support relating to the LIBRARY's use of such third party hardware and software, and shall reserve the right to charge, at the rate of \$200 per hour with a minimum \$400 charge, so long as such charge is authorized in advance by the LIBRARY and the LIBRARY has issued a purchase order for the services. In the process of trouble-shooting a reported issue, Polaris in its sole discretion may require the LIBRARY to remove any third-party hardware/software utilized by the LIBRARY and to replicate the reported issue in that environment.
- 8.7 The LIBRARY will be responsible for:
- reports & notices;
 - cost associated with optional Polaris upgrade training;
 - cost of custom reports & SQL queries;
 - local workstation & peripheral hardware maintenance including O/S software;
 - network connectivity;

9. Site Preparation

It is understood and agreed that the Services fees do not include any costs with regard to the preparation of the LIBRARY site or the installation of LIBRARY Equipment. The LIBRARY shall, at its own expense, prepare the site to house the LIBRARY Equipment, and shall provide suitable electric service for operation of said LIBRARY Equipment.

10. Privacy of Data

Polaris agrees not to use patron details such as names, addresses, etc., for any purpose other than providing requested service to the LIBRARY and agrees not to transmit LIBRARY data to any third party, except as requested by the LIBRARY.

11. Protection and Security

- 11.1 The LIBRARY will take appropriate action, by instruction, Agreement or otherwise, with any persons permitted access to licensed Polaris ILS Software and Polaris ILS Software Materials so as to enable the LIBRARY to satisfy its obligations under Article 7 herein.
- 11.2 All licensed Polaris ILS Software Materials contain Polaris proprietary information, use of which is limited by the licenses granted in this Agreement. The LIBRARY will not disclose or otherwise make available, except as required by law, any licensed Polaris ILS Software Materials in any form to any third party except to the LIBRARY's employees, or to agents directly concerned with licensed use of the program. Subject to the limitations of this article, the LIBRARY may make additional copies of the Polaris ILS Software Materials.

12. Warranty

- 12.1 Polaris warrants that the Polaris ILS Software will perform substantially in accordance with the Polaris ILS Software Materials in effect on the Live Date. Polaris agrees to make reasonable efforts to correct all reproducible material errors in the Polaris ILS Software and discrepancies between the Polaris ILS

Software Materials and the actual Polaris ILS Software performance. Polaris does not warrant that the operation of the Polaris ILS Software and its availability to the LIBRARY via the Internet will be uninterrupted or error-free or that all program defects will be corrected. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Polaris does not warrant that the Polaris ILS Software or any equipment, system or network on which the Polaris ILS Software is used will be free of vulnerability to intrusion or attack. Polaris provides no warranties or guarantees with respect to Third Party Software.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR ANY OTHER TYPE WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL.

- 12.2 Polaris disclaims any responsibility for correcting any inability by the LIBRARY to connect to the Polaris ILS Software as a result of the failure or mis-configuration of the LIBRARY Equipment. Polaris may provide consultation services or assistance relating to the failure or mis-configuration of LIBRARY Equipment, and reserves the right to charge for said services or assistance at the rate of \$200 per hour with a minimum \$400 charge.
- 12.3. Polaris reserves the right, at Polaris' sole discretion and expense, to change the platform for the On-Going Hosted Services, provided that such new platform provides equal or better performance.

13. Support Services

- 13.1 Support services constitute software maintenance and On-Going Hosted Services - as defined under Schedule B herein.
- 13.2 Polaris ILS Software updates will be made available periodically. Polaris shall have full discretion as to the timing and content of Polaris ILS Software updates during the term of this Agreement. Failure to release Polaris ILS Software updates during any specific term does not constitute default on the part of Polaris because of the continuation of the provision of Software Maintenance and On-Going Hosted Services. Given the complexity of the library automation environment, including such factors as evolving standards, developmental tools, and market demands, Polaris reserves the right to modify its development plan for future releases for the best interests of its current customers, its organization (from a support perspective) and future marketability.
- 13.3 Each type of program service and maintenance specified will be available unless discontinued by Polaris upon one hundred and eighty (180) days written notice.
- 13.4 Polaris reserves the right to charge at \$200 per hour with a minimum \$400 charge for any additional effort that results from providing services for a licensed program altered by the LIBRARY, or for support made necessary by the failure of the LIBRARY to maintain system and network security in accordance with industry best practices.
- 13.5 Polaris Customer Support is available by telephone, email and web. Prior to contacting Support, the LIBRARY agrees to have performed relevant troubleshooting in those areas for which the LIBRARY is responsible. Telephone service is available Monday through Friday from 8:30AM to 8:00PM EST, excluding Polaris company holidays. From 8:30AM to 5:00PM EST customers will be able to call Customer Support and reach their Site Manager. From 5:00PM to 8:00PM EST customers will either reach a Site Manager or a Support Engineer working at Polaris headquarters that evening. After 8:00PM EST customers needing emergency support to correct "system down" problems that impact critical functionality will be transferred to an Answering Service and will be referred to the designated Customer Support representatives on-call evenings, weekends, and holidays to provide 24x7 emergency support. Non-emergency issues will be addressed by Customer Support during normal business hours.

14. Patent and Copyright

- 14.1 Polaris will defend the LIBRARY against any claim that licensed Polaris ILS Software and/or Polaris ILS Software Materials furnished and used within the scope of the license granted herein infringe a U.S. patent or copyright and Polaris will pay resulting costs, damages and attorney fees finally awarded, provided that: (a) the LIBRARY promptly notifies Polaris in writing of the claim, and (b) Polaris has sole control of the defense and all related settlement negotiations.
- 14.2 If such claim has occurred, or in Polaris' opinion is likely to occur, the LIBRARY agrees to permit Polaris at its option at no additional expense to the LIBRARY either to procure for the LIBRARY the right to continue using the licensed Polaris ILS Software and/or Polaris ILS Software Materials, or to replace or modify the same so that they become non-infringing. If neither of the foregoing alternatives is reasonably available, the LIBRARY agrees on one (1) month's written notice from Polaris to return or destroy all copies of the licensed Polaris ILS Software Materials received from Polaris and all copies thereof, and to receive a refund for any monies paid for the lease of said Polaris ILS Software licenses.
- 14.3 Polaris shall have no obligation to defend the LIBRARY or to pay costs, damages, or attorney's fees for any claim based upon the LIBRARY's use of licensed Polaris ILS Software that has been altered by the LIBRARY without Polaris' express permission and in direct breach of Article 7.3. herein.
- 14.4 The foregoing states the entire obligation of Polaris with respect to infringement of patents or copyrights.

15. Limitation of Remedies

- 15.1 For any claim concerning performance or non-performance by Polaris pursuant to or in anyway related to the subject matter of this Agreement and any supplement hereto, the LIBRARY shall be entitled to recover actual damages to the limits set forth in this section. No action, regardless of form, arising out of this Agreement, may be brought by either party more than two (2) years after the cause of action has arisen.
- 15.2 For any action brought within two (2) years of the execution of this Agreement, Polaris' maximum aggregate liability, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to a maximum of all monies paid to date of action, exclusive of any subscription fees.
- 15.3 For any action brought more than two (2) years but less than five (5) years from the execution of this Agreement, Polaris' maximum aggregate liability, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to a maximum of all monies paid for the Software after any discount has been applied, and exclusive of any maintenance and subscription fees.
- 15.4 For any action brought more than five (5) years from of the execution of this Agreement, Polaris' maximum aggregate liability, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to a maximum of all monies paid in the year in which the action was brought.
- 15.5 This limitation of liability will not apply to Articles 14 and 25 herein, or to claims for personal injury to the extent caused in whole or in part by Polaris' negligence.
- 15.6 IN NO EVENT WILL POLARIS BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE, OPERATION, OR MODIFICATION OF THE SYSTEM BY THE LIBRARY, OR FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, EVEN IF POLARIS HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES.

16. Waiver of rights

The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

17. **Severability**

If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.

18. **Headings**

The headings of the various Paragraphs and Subparagraphs herein are for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement.

19. **Governing Law**

This Agreement shall be subject to all applicable laws of the Federal Government of the United States of America and to the laws of the State of California. The applicable law for any legal disputes arising out of this Agreement shall be the law of the State of California. The prevailing party in any action brought under this Agreement shall be entitled to reasonable attorney fees and costs as awarded by the court including any action at the appellate level.

20. **Saving Clause**

Typographical errors are subject to correction.

21. **Assignments**

The LIBRARY agrees that no sub-licensing, or assignment of its rights or interest, nor delegation of its duties under this Agreement shall be made or become effective without the prior written consent of Polaris. Any attempted sublicensing, assignment or delegation without prior written consent shall be wholly void and ineffective for all purposes.

22. **Taxes not included**

The charges shown on this Agreement do not reflect applicable state and local taxes that may be added to the amounts shown at the time of invoicing.

23. **Whole Agreement**

This Agreement constitutes the entire Agreement between the parties and supersedes all proposals, presentations, representations, and communications, whether oral or in writing, between the parties on this subject. Neither party shall be bound by any warranty, statement or representation not contained herein. The signatories acknowledge reading, and agree to comply with, all terms and conditions.

24. **Force Majeure**

Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, provided that the delayed party has taken reasonable measures to notify the other of the delay in writing. The delayed party's time for performance shall be deemed to be extended for a period mutually agreeable to both parties. Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government after the date of the Agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war and epidemics. Failure of subcontractors and inability to obtain materials shall not be considered a condition beyond a party's reasonable control. This provision does not relieve the LIBRARY of its obligation to make payments then owing.

25. **Indemnification**

Polaris agrees to indemnify, hold harmless and defend the LIBRARY and its agents, officials and employees from any liability, claim or injury, related to or caused by fault or negligence of Polaris employees or subcontractors.

26. **Amendments**

Amendments and modifications to all, or any part, of this Agreement and to the appendices and referenced attachments, may be made, and shall be binding, only if in writing and signed by duly

authorized representatives of both parties.

27. Proprietary Information

The parties to this Agreement understand and agree that in the performance of work or services under this Agreement, or in contemplation thereof, either party may have access to private or confidential information which may be owned or controlled by the other party, and that such information may contain proprietary details, disclosures, or sensitive information which disclosure to, or use by, a third party will be damaging or illegal. Both parties agree that all information, disclosed by one party to the other, which is in written form and which is marked confidential, shall be held in confidence and used only in performance of services under this Agreement. Both parties shall exercise the same standard of care to protect such information as is used to protect their own proprietary data.

28. Ownership of Data

Polaris acknowledges the LIBRARY's ownership of the various databases installed upon the System. Upon termination of this Agreement by either party, or upon conclusion of the Agreement term, Polaris agrees to assist the LIBRARY in extracting all LIBRARY-owned data from the System. Such assistance shall include personnel time and Polaris' best efforts, provision of documentation regarding the format and contents of the extracted data, verification that extracted data is complete and in a form suitable for use by the LIBRARY, and other assistance necessary for the extraction of data. Such assistance shall be provided by Polaris at no charge to the LIBRARY if termination of this Agreement by the LIBRARY comes as a direct result of a breach, by Polaris, of any of the terms and conditions set forth herein; in all other circumstances concerning termination, Polaris shall be entitled to charge the LIBRARY at its then current rates for data extraction services, including any actual expenses for travel to LIBRARY. The data shall include all contents of all files created, maintained, and owned by the LIBRARY, including all bibliographic data, holdings data, patron data, in-process transaction data associated with circulation control, cataloging, acquisitions, serials control, and any other activity or subsystem in use by the LIBRARY. Wherever standards such as MARC exist for the format of that data, Polaris will furnish such data in the standard format. Appropriate documentation shall be provided. These Services will not be delayed or withheld by Polaris in the event of any legal proceeding initiated by either party.

29. Returned Goods Authorization.

29.1 Goods mistakenly configured or shipped by Polaris will be picked up at Polaris' expense and a full credit will be applied to the customer's account. In order to assure the timely handling of your return, a Returned Materials Authorization number must accompany all returns.

29.2 Goods mistakenly ordered by the LIBRARY may be returned within 30 days of sale. If the return is in its original packaging and fit for resale as new, the LIBRARY's account will be credited for the selling price less a 20% restocking fee and less any shipping and handling charges. The LIBRARY must obtain a Returned Materials Authorization number and ship the return at its own expense, including insurance for the replacement value of the return. If the return is lost in shipment, the LIBRARY remains liable to Polaris for the full purchase price as invoiced and must collect from the carrier or insurer. If the return is shipped to Polaris without a Returned Goods Authorization, an additional tracing fee may be deducted from the value of the return. If the return is in a condition that prevents its resale as new, the LIBRARY will receive credit only for the value as determined by Polaris for use as maintenance spares or for sale as used equipment. Software licenses, barcode labels and all custom goods are not returnable.

IN WITNESS WHEREOF the parties have duly executed and delivered this Agreement, which shall inure to the benefit of and be binding upon the successors of the respective parties, as of the last date indicated below.

ACCEPTED FOR THE LIBRARY

By: _____

Title: _____

Date: _____

ACCEPTED FOR POLARIS LIBRARY SYSTEMS

By: _____

Title: President, Polaris Library Systems

Date: _____

APPROVED AS TO FORM FOR POLARIS LIBRARY SYSTEMS

By: _____

Title: Manager, Contracts and Proposals

Date: _____

Schedule A
Library Statistics

| | | |
|----|--|---------|
| 1. | Estimated Number of Patron Records | 42,000 |
| 2. | Estimated Number of Item Records | 75,000 |
| 3. | Estimated Number of Bibliographic (MARC) Records | 65,000 |
| 4. | Estimated Number of Authority Records | N/A |
| 5. | Items Issued Annually | 235,000 |
| 6. | Staff Client Licenses | 10 |

7. Name and address of main LIBRARY location:

Colton Public Library
656 North 9th Street
Colton, CA 92324

8. Other locations:

Luque Library (Branch)

**Schedule B
Services**

| One-Time Services | Description |
|---|--|
| Training (A maximum of 10 trainees allowed per on-site session. Additional charges apply for additional trainees up to a maximum of 15) | <ul style="list-style-type: none"> ▪ 4 days on-site training: Patron Services, Cataloging, PAC ▪ ½ day web based system administration overview training ▪ ½ day follow-up web training |
| Implementation Services | <ul style="list-style-type: none"> ▪ project management, profiling assistance, and scheduling ▪ 2 day on-site implementation/consultation |
| PAC Branding | <ul style="list-style-type: none"> ▪ enable pre-programmed theme selection ▪ resize existing library logo (2 hour maximum - if additional time is required, that will be quoted separately at the rate of \$200/hour) |
| Data Extraction/Migration | Extraction/Migration of bibliographic, item, patron and transaction records from Horizon. |
| Software | Provision of software as listed under Schedule C Polaris ILS Software |
| Subscription Services | Syndetic Solutions |
| ILS Software Materials | User Guides & Administrative Guides - on the Hosted Server |
| On-Going Hosted Services | Description |
| Use of Hardware & 3rd Party Software | Ongoing use of the server-side hardware and 3 rd party licenses required by Polaris (e.g. Microsoft Windows Server, SQL Server, Microsoft Client Access Licenses, etc.). |
| Software Maintenance | On-going maintenance and support of the ILS Software |
| Network Usage | On-going use of proportional bandwidth to access On-Going Hosted Services |
| Hosted Technical Support | <ul style="list-style-type: none"> ▪ monitor Polaris ILS server jobs and batch procedures ▪ maintain the system server software configuration ▪ upgrade Polaris ILS servers to all new releases ▪ load operating system patches on servers ▪ update and monitor server virus protection ▪ maintain host-site Internet connectivity and capacity ▪ ensure successful backups of the system servers ▪ maintain server hardware and capacity ▪ monitor server activity |
| Hosted System Administration | <ul style="list-style-type: none"> ▪ manage Polaris ILS configuration changes ▪ perform Polaris ILS system administration tasks as required ▪ update system policy tables on an as-needed basis (such as dates closed, loan periods, patron and fine codes) |

**Schedule B
Services - continued**

| | |
|---|--|
| Periodic Maintenance | Polaris reserves the right to perform periodic maintenance on the hosted server(s). Preventative maintenance restarts and Microsoft and Anti-Virus software updates occur periodically during the overnight period and sometimes require server reboots. Such maintenance would occur between the hours of 5:00am - 7:00am EST on Thursdays, and may necessitate a service outage during part or all of this timeframe. Notification will be provided to the LIBRARY in advance whenever possible. |
| Service Limitations - Simply Reports | Polaris reserves the right to disable publishing of Simply Reports to the Polaris toolbar if such reports impact other customers sharing the same hosted service platform. Polaris is not obligated to provide additional computing resources to accommodate high-overhead jobs. Reports may be saved to a local workstation only. |

Schedule C
Polaris ILS Software

- Polaris ILS Database (full and documented schema available via Extranet)
- Z39.50 Server
- SMTP For email notification (Library may also use other email server)
- Remote Patron Authentication via SIP2 service
- Find Tool (Over 600 search points available)
- Cataloging with authority control
 - MARC validation program
 - Bibliographic and authority records importing interfaces
 - Fully integrated WYSIWYG Label Printing (see/edit before you print)
- Circulation
 - Offline circulation, inventory and Bookmobile (one daily offline client download per location at no additional cost - LIBRARY may pull only one copy of the daily Offline file to a local resource)
 - Group holds
 - OCLC Inter Library Loan Interface
- Record set (bulk change operations for patron, item, authority and bibliographic records)
- Z39.50 client
- System Administration (familiar Directory / Tree structure with point-and-click options)
- Integrated desktop Reports and Notices (export to local workstation in Excel, Word, PDF, HTML and XML formats)
- Extensive online help
- Polaris ILS PowerPAC supports Internet Explorer 6.0 +, Netscape Navigator 7.0+, Mozilla Firefox, Opera 8.02+, Safari 1.2+
- Multiple database searching
- Patron Authentication
- My Account Options: Self-registration, search agent alerts, pre-notification of overdues, reading history, formatted title lists (MLA, Chicago Manual of Style, etc.)
- Customizable Dashboards (automated links to bestsellers, subject areas, etc.)
- Simply Reports x 1

**Schedule D
Cost Summary**

| Polaris ILS Software Licenses | System Cost | 2nd Year Maint. | 3rd Year Maint. | 4th Year Maint. | 5th Year Maint. |
|---|--------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Polaris ILS Server/Client Software Includes: <ul style="list-style-type: none"> • Polaris ILS Database, Z39.50 Server, SMTP for email notification, Remote Patron Authentication, System Administration, System Reports. • 10 Staff Client Licenses • Unlimited PAC access | \$17,500 | \$3,150 | \$3,244 | \$3,341 | \$3,441 |
| Simply Reports x 1 | \$3,000 | \$750 | \$772 | \$795 | \$819 |
| Sub-Total | \$20,500 | \$3,900 | \$4,016 | \$4,136 | \$4,260 |
| Services | | | | | |
| Data Extraction/Migration | \$16,825 | N/A | N/A | N/A | N/A |
| Training (5 days) | \$8,200 | N/A | N/A | N/A | N/A |
| Implementation Services | \$5,600 | N/A | N/A | N/A | N/A |
| PAC Branding | N/C | N/A | N/A | N/A | N/A |
| Hosted Services <ul style="list-style-type: none"> • Use of hardware/3rd party software • Network usage • Technical support • System administration | \$4,000 | \$4,120 | \$4,244 | \$4,371 | \$4,502 |
| Sub-Total | \$34,625 | \$4,120 | \$4,244 | \$4,371 | \$4,502 |
| Subscription Services | | | | | |
| Enhanced Data Content for PAC | \$902 | \$929 | \$957 | \$986 | \$1,016 |
| Sub-Total | \$902 | \$929 | \$957 | \$986 | \$1,016 |
| Sub-Total: | \$56,027 | | | | |
| Less Discount: | (\$10,084) | | | | |
| Total Year One Due on Live Date | \$45,943 | \$8,949 | \$9,217 | \$9,493 | \$9,778 |

Annual costs for Software maintenance, On-Going Hosted Services and Subscription Services will commence one (1) year from the Live Date.

Schedule E
Enhanced Data Content for PAC

Subscription Service to Syndetic Solutions

Polaris is a reseller for Syndetic Solutions, which offers enriched content for display in the PAC, including tables of contents, first chapters, full color cover images, reviews, etc. Pricing for Syndetic Solutions is an annual subscription, based on annual circulation statistics. Price increases may occur on an annual basis, at the time of subscription renewal. The LIBRARY's reported annual circulation is 235,000. Based on this figure, the first-year annual subscription will be as follows (the LIBRARY may de-select elements as required to the minimum annual fee of \$550):

| Component | Annual Cost |
|---|-------------------------|
| Table of Contents | \$113 |
| Fiction Profile | \$89 |
| Find Similar Titles (must also buy Fiction Profile) | \$89 |
| Series Information | Not Selected - Optional |
| Awards | Not Selected - Optional |
| Summaries | \$113 |
| Cover Images | \$136 |
| First Chapters/Excerpts | Not Selected - Optional |
| Author Notes | Not Selected - Optional |
| PW Review (includes Criticas Review) | \$113 |
| LJ Review | \$113 |
| SLJ Review | Not Selected - Optional |
| Choice Review | Not Selected - Optional |
| Booklist Review | Not Selected - Optional |
| Horn Book Review | Not Selected - Optional |
| NY Times Book Review | Not Selected - Optional |
| Kirkus Review | Not Selected - Optional |
| Video & Music 1 | \$136 |
| Total Annual Subscription Fee | \$902 |

No change may be made to the selected components until one (1) year from the Live Date.

**Schedule F
Hosted Environment**

Technical Service/Staff Access Workstations and Patron Access Workstations-

| | |
|------------------------|---|
| Operating Systems | - Windows XP Professional (32-bit only) with current Service Pack - Windows Vista Business (32-bit or 64-bit) with current Service Pack - Windows Vista Ultimate (32-bit or 64-bit) with current Service Pack - Windows Vista Enterprise (32-bit or 64-bit) with current Service Pack - Windows 7 Professional (32-bit or 64 bit) with current Service Pack (Ultimate or Enterprise Editions) |
| System Processor | 1 GHz or better |
| System Memory | - XP 32-bit Professional: Recommended 1GB - Minimum Required: 512MB - Vista Business (32-bit or 64-bit): Recommended: 2GB - Minimum: 1GB - Windows 7 (32-bit or 64-bit): Recommended: 2GB - Minimum: 1GB |
| Hard Disk Requirements | Minimum: 10 GB |
| Video Requirements | SVGA Graphics Controller /4 MB Video Memory or better |
| Other | 100 Mbps NIC Card |
| Monitor | 17" (1024 x 768) |

Remote Desktop Services (Terminal Services)

Remote Desktop Services works by allowing individual applications to run on a server, rather than on the user's workstation. Remote Desktop Services simply sends screen images to the user's machine, and the user's machine in turn sends keystrokes and mouse movements back to the server. By doing this, Remote Desktop Services allows clients to run applications that they might otherwise not have the hardware or bandwidth to support. The Remote Desktop Protocol (RDP) has been designed and optimized to give users a good application experience over low-bandwidth connections. Because only keyboard, mouse and screen drawing information is sent over the network, a quality user experience can be attained under very low-bandwidth conditions. The client access device can either be a full rich Windows personal computer, or a thin client.

Requirements:

- Remote Desktop Connection (RDC) client version 6.1 or higher;
- Reliable network connectivity with adequate bandwidth (estimated 20Kbps-30Kbps per concurrent RDC user) and low end-to-end network latency between the workstation and Windows Terminal Server;

Schedule F
Hosted Environment - continued

USERNAME Convention and PASSWORD Complexity

Access to Hosted Polaris requires a two-stage logon. A user must first logon to the Terminal Server and then must logon to the Polaris application. Usernames for Terminal Server and Polaris user accounts must consist of at least 8 characters. Polaris recommends that the usernames include a user-friendly prefix that makes the username unique to the system or branch. For example, a satisfactory username convention for Public Library System could be plsXXXXX (i.e. plscirc1, plscat07, etc.).

Passwords must be complex. At a minimum, passwords must consist of at least 8 characters including at least one upper or lower case letter and at least one number or special character, and cannot include the library name or username. Polaris strongly recommends that common words should not be used as the password root. Passwords must be set to expire within a minimum of 180 days.