

THE JOINT POWERS AGREEMENT
OF THE PACIFIC LIBRARY PARTNERSHIP

THIS joint powers agreement between cooperative library systems to form the PACIFIC LIBRARY PARTNERSHIP (hereinafter called "PLP") made and entered into this 9th day of January, 2009, by and between the undersigned signatories herein.

WITNESSETH

WHEREAS, the PENINSULA LIBRARY SYSTEM JOINT POWERS AGENCY, the MONTEREY AREA BAY COOPERATIVE LIBRARY SYSTEM JOINT POWERS AGENCY, the BAY AREA LIBRARY AND INFORMATION SYSTEM JOINT POWERS AGENCY and the SILICON VALLEY LIBRARY SYSTEM JOINT POWERS AGENCY (hereinafter, "the parties") desire to consolidate some of their activities and form a new joint powers agency for that purpose; and

WHEREAS, Government Code section 6500 *et.seq.* authorizes several joint powers agencies to form a separate joint powers agency;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS, effective the date last signed by any party hereto:

I. PURPOSE

The purpose of this Joint Powers Agreement ("Agreement") is to provide for the exercise of the common power of each of the agencies hereto to provide library services, through a new and separate public agency known as PLP, which shall be responsible for administering this Agreement. This common power shall be exercised in a manner consistent with and in furtherance of the objectives of the California Library Services Act (Education Code, §18700 *et.seq.*), hereinafter referred to as "Library Services Act," and in such a manner that the entity created hereby shall be eligible for any grant funds that may be payable pursuant to said Act and such other laws of a similar nature both state and federal that now exist or that may from time to time be enacted. This instrument shall be construed in a manner consistent with these objectives. The foregoing, however, shall not be deemed to limit the extent of the powers conferred on the public entity created hereby. PLP shall possess all the powers, prerogatives and authority necessary to plan, operate, and administer a cooperative library system, and those powers necessary to establish, improve and extend library services, held by its members, and those powers designated in Government Code section 6508.

It is further intended by the parties hereto to enter into this Agreement in order to enjoy the joint sharing of benefits and costs in any and all activities they are authorized to undertake.

The parties shall have equal access to the full range of services available from PLP and jointly make decisions regarding the implementation and management of PLP, in accordance with the terms of this Agreement, to the maximum extent provided by law.

II. NAME AND POWERS

The official name of the entity shall be the PACIFIC LIBRARY PARTNERSHIP. Said entity shall have the powers granted to such library systems under the Government and Education Codes of the State of California and such other powers as may be necessary to accomplish the purpose of this Agreement.

III. ADMINISTRATIVE COUNCIL

Administrative Council (hereinafter referred to as "Council") is the governing body of PLP and shall be made up of voting representatives hereto who shall be directors of libraries located within each party hereto.

(a) Functions; Powers: The Council shall formulate policy and goals, adopt a system plan of service, establish and review programs, approve a budget, direct the administration of this Agreement, establish appropriate committees, including an Executive Committee, and shall have such incidental powers as may be necessary and proper to carry out those specifically enumerated.

(b) Procedure: The Council shall adhere to the Bylaws adopted with this Agreement for the conduct of business provided: however, the following rules with regard to quorum and voting shall apply:

(1) Quorum: A majority of the voting members of the Council shall constitute a quorum for the transaction of any business.

(2) Voting: The affirmative vote of a majority of those voting members present shall be necessary for all action taken on the following: (aa) approval of the budget; (bb) adopting a system plan of service; (cc) a declaration that a party has failed to comply with the terms of this agreement; (dd) admission of any new party; (ee) setting of annual dues or fees; (ff) hiring the Chief Executive Officer; (gg) amendment to the Bylaws. Provided, however, amendments to Bylaws shall require the affirmative vote of the majority of the entire Council.

IV. BYLAWS

PLP shall operate pursuant to the Bylaws adopted by each party upon its adoption of this Agreement, a copy of which is attached hereto as Exhibit A. The Agreement shall control, in the event of any inconsistency between it and the Bylaws.

V. TREASURER/FISCAL AGENT

(a) PLS shall act as the Treasurer/Controller and fiscal agent for PLP and shall act as the depository and shall have custody of the money of PLP, and perform those duties required by Government Code sections 6505 and 6505.5.

(b) The Council shall designate its fiscal year, maintain a current inventory of the property owned by PLP, and provide for an annual audit of the accounts and records of PLP by a certified public accountant or public accountant. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing standards. PLP shall bear the costs of the audit.

VI. RESPONSIBILITIES OF PARTIES

Parties of PLP:

(a) Agree to participate in the programs which are a requirement of the California Library Services Act.

(b) Shall pay all monies owed PLP when due.

(c) Will regularly participate in the meetings and deliberations of the Council.

FAILURE TO COMPLY with these rules and regulations will constitute a breach of this Agreement by a party and, as such, shall be subject to the remedial provisions of the Agreement.

VII. MANAGEMENT AND CONTROL OF INDIVIDUAL LIBRARIES, PROPERTY, AND ASSETS

Nothing contained herein shall be deemed to limit the right of parties to administer, manage, direct, and control their own libraries and library resources, independently select their own books and other library materials, hire their own personnel, and operate according to the policies and rules established by their own joint powers agreements, bylaws, and their governing bodies. Nothing contained herein shall operate or be interpreted as a pledge by parties of their own assets or property to PLP. Except as specifically stated in Section VIII, the assets and property of each party shall remain its own.

VIII. FUNDING

PLP shall provide for strict accountability of all funds and reports and disbursements. PLP may apply for and receive such grants as may be provided for by the laws of the state of California and the Federal Government. However, in recognition that start-up funding is necessary, within ten (10) days of its execution hereof, each party

hereto shall contribute an amount to be determined by the Finance Committee, to the general fund of PLP, which shall be non-refundable.

IX. COST ALLOCATION PLAN

The Council shall determine the annual membership fee that shall be contributed by each participating party for the operation of the activities and programs of PLP. Each member's fee shall be according to a formula which the Council determines to be fair and equitable. This formula shall be reviewed annually.

X. CORRECTIVE AND REMEDIAL MEASURES

Whenever a majority of the Council believes that a participating party has committed a remediable breach of any material obligation set forth in this Agreement, it may give the party notice to that effect with reasonable specificity. The participating party shall use its best efforts to promptly remedy the breach and shall inform the Council of the nature of the remedial action planned and taken or will respond to any such notice, with an explanation that sets forth reasonable cause of the breach. When a breach does exist that is not remedied within thirty (30) days after notice of it, the Council may seek relief under Section XII hereof.

XI. APPLICABLE LAW

This Agreement shall be governed by, subject to, and construed according to the laws of the State of California.

XII. DISPUTE RESOLUTION PROCEDURE

If any party considers that any act or decision by PLP is unfair and injurious to it, or if the Council determines that a party's material breach has not been remedied, then the aggrieved party (be it a party or PLP) shall invoke binding arbitration to resolve the dispute pursuant to Code of Civil Procedure section 1280 *et.seq.*, with each side to bear its own attorney's fees but with the non-prevailing party to pay the arbitrator's fees.

XIII. ADMISSION OF NEW PARTIES

Any California Cooperative Library System operating as a joint powers agency may join PLP upon the application of its party and upon the consent of the Council, provided that such agency has agreed to abide by all the terms of this Joint Powers Agreement and Bylaws. The Council shall prescribe the amount of money, if any, that shall be paid by the new agency as a prerequisite to its becoming a participant.

XIV. MUTUAL HOLD HARMLESS AND INDEMNIFICATION

(a) It is agreed that each party hereto shall defend, hold harmless and indemnify PLP and its officers, agents and/or employees from any and all claims for

injuries to persons or damage to property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of any other party, their officers, agents and/or employees, except to the extent PLP has procured liability insurance covering such claim.

(b) It is further agreed that the PLP shall defend, hold harmless and indemnify any party, its officers, agents and/or employees from any and all claims for injuries to persons or damage to property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of PLP, its officers, agents and/or employees.

(c) In the event of concurrent negligence of one or more parties, their officers and/or employees, and PLP, its officers, agents and/or employees, then the liability for any and all claims for injuries to persons or damage to property which arise out of the terms of this Agreement shall be apportioned under the California theory of comparative negligence as established presently, or as may be hereafter modified.

XV. INSURANCE

PLP shall not commence work under this Agreement until all insurance required under this paragraph has been obtained. PLP shall maintain certificates of insurance evidencing the required coverage. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to PLP of any pending change in the limits of liability or of any cancellation or modification of the policy.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the Council, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and recommend to the parties the suspension of all further work pursuant to this Agreement.

(a) Workers' Compensation and Employer's Liability Insurance: PLP shall have in effect during the entire life of this agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage, if required.

(b) Liability Insurance: PLP shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from PLP's operations under this Agreement, whether such operations be by itself or by any sub-contractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall be One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. All parties and their officers, agents, employees and servants, shall be named as additional insureds on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the parties, and their officers, agents, and

employees shall be primary insurance to the full limits of liability of the policy, such other insurance shall be excess insurance only.

Such liability policy shall also provide errors and omissions coverage for all members of the Council.

PLP, alone or through insurance, shall be responsible for defending third party actions against PLP.

(c) Property Insurance: PLP shall acquire and maintain all-risk property insurance to cover full replacement value of all PLP equipment and property. Such insurance shall include but not be limited to fire and extended coverage, business interruption and extra expense.

XVI. AMENDMENTS

This Agreement may be amended by approval of two-thirds of the Council.

XVII. DISSOLUTION OF PLP

PLP shall be dissolved by approval of two-thirds of the Council. Disposition of assets or debts of PLP as determined by the Council shall be made in such a manner that each party shall share pro-rata in the proceeds or expenses.

XIII. WITHDRAWALS

Any party wishing to withdraw from this Agreement must do so effective on July 1, of any succeeding year and must provide at least six months written notice to the Council. Notice shall be in the form of a resolution adopted by the party wishing to withdraw. Withdrawing party shall not be entitled to any refund of its contributions, nor to any share of PLP assets unless PLP votes to dissolve prior to actual withdrawal date.

XIV. TERMS OF AGREEMENT

This Agreement shall continue perpetually until modified or terminated by the parties hereto. The debts and obligations of PLP shall not be the debts and obligations of the parties hereto except as provided in Section IX.

IN WITNESS WHEREOF the parties hereto have set their hand the day and year written.

PENINSULA LIBRARY SYSTEM
JOINT POWERS AGENCY

By: *[Signature]*

Date: 2/5/09

MONTEREY BAY AREA COOPERATIVE LIBRARY
SYSTEM JOINT POWERS AGENCY

By: *[Signature]*

Date: 1/9/09

BAY AREA LIBRARY AND INFORMATION
SYSTEM JOINT POWERS AGENCY

By: *[Signature]*

Date: Jan. 16-2009

SILICON VALLEY LIBRARY
SYSTEM JOINT POWERS AGENCY

By: *[Signature]*

Date: 2/16/09

PACIFIC LIBRARY PARTNERSHIP
JOINT POWERS AGENCY

By: *[Signature]*

Date: 5-15-09