

AMENDMENT TO THE JOINT POWERS AGREEMENT OF THE  
PENINSULA LIBRARY SYSTEM

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THIS AMENDMENT to the joint powers agreement of the PENINSULA LIBRARY SYSTEM (hereinafter called PLS) made and entered into this 1 day of July, 1985, in the County of San Mateo, by and between the undersigned signatories hereto.

W I T N E S S E T H

WHEREAS, the cities of BURLINGAME, DALY CITY, MENLO PARK, REDWOOD CITY, SAN BRUNO, SAN MATEO, SOUTH SAN FRANCISCO and the COUNTY OF SAN MATEO have previously entered into a joint powers agreement for an entity known as PLS; and,

WHEREAS, the parties have entered into a second joint powers agreement providing for a SHARED AUTOMATED CIRCULATION SYSTEM, also known as the PENINSULA LIBRARIES AUTOMATED NETWORK (hereinafter called PLAN); and,

WHEREAS, it is the desire of the parties that PLAN be merged into PLS upon the following terms and conditions.

NOW THEREFORE IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

A. That upon the effective date of this agreement all of the right, title, and interest of PLAN in its assets and obligations shall become the assets and obligations of PLS.

B. That as a result of said merger the joint powers agreement of PLS shall be as follows:

"I. PURPOSE

The purpose of this Joint Powers Agreement is to provide for the exercise of the common power of each of the agencies hereto to provide library services. 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, Sec. 18,700 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. PLS 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.

It is further intended by the parties hereto (a) to enter into this Agreement for the joint sharing of benefits and costs related to an automated circulation system (hereinafter called SYSTEM) for the respective libraries of each party; (b) to recognize the desirability of making such a system available for all libraries operating in San Mateo County.

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

## II. NAME AND POWERS

The name of the entity shall be the PENINSULA LIBRARY SYSTEM. Said entity shall have the powers granted to such library systems under the Education Code 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 PLS and shall be made up of:

(a) The voting representative of each party hereto who shall be the head librarian of that party or in the absence of the head librarian, the duly appointed alternate as determined by each jurisdiction. Additional non-voting representatives may be appointed with the approval of the Council.

(b) Functions; Powers: The Council shall formulate policy and goals, establish and review programs, approve a budget, direct the administration of this Agreement, establish appropriate committees, (including a manager's Review Committee to advise on all matters pertaining to the SYSTEM) concerning automation consisting of the chief administrative officer of each participating entity, and shall have such incidental powers as may be necessary and proper to carry out those specifically enumerated).

(c) Not later than October 1, 1985, the Council shall adopt amendments to the existing operations manual. Said amendments shall include, but not be limited to the following subjects:

- (1) Procedures governing eligibility to borrow library materials and participate in library programs.
- (2) Policies regarding circulation and lending.

- (3) What records are to be maintained, procedure for their maintenance, and policies on confidentiality and for disclosure of the records.
- (4) How, and in what manner services are to be performed.
- (5) Committee responsibilities and memberships.

(d) Procedure: The Council shall establish such bylaws for the conduct of the business as may be necessary and proper, 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 except the following: (aa) approval of the budget; (bb) a declaration that a party has failed to comply with the terms of this Agreement; (cc) use of SYSTEM by other agencies or organizations; (dd) decisions regarding SYSTEM enhancements and/or expansions; (ee) financial matters; (ff) personnel matters as specified by the Personnel Manual. As to such matters any action taken shall require the affirmative vote of the majority of the entire Council.

#### IV. BYLAWS

At its first meeting the Council shall elect a chairperson and vice-chairperson for PLS from its members, who shall assume the duties of office upon election. Thereafter, PLS shall provide for annual election and rotation of officers in its Bylaws. The most recently published edition of Robert's Rules of Order shall apply to the Council's meetings until amended Bylaws are adopted.

#### V. POWERS OF THE ADMINISTRATIVE COUNCIL:

(a) The Council shall have those powers set forth in Section 6508 and 6509.5 of the Government Code.

#### VI. FISCAL AGENT:

(a) The Treasurer of the City of Daly City is hereby designated as the fiscal agent for PLS to serve until such time as the Council shall designate another Fiscal Agent.

(b) The Council shall designate its fiscal year, maintain a current inventory of the property owned by PLS, and provide for an annual audit of the accounts and records of PLS 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. PLS shall bear the costs of the audit.

## VII. RESPONSIBILITIES OF PARTICIPATING LIBRARIES

Members of PLS:

(a) Shall permit any resident borrower in good standing in one member library to borrow library materials circulated by any other member library according to its rules, without discrimination because of the borrower's place of residence and without payment of a nonresident fee.

(b) Agree to lend circulating books and other materials according to their own rules, on interlibrary loan, to other member libraries.

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

(d) May choose to own, and jointly operate the PLS SYSTEM and other automated systems.

(e) May participate in the use and operations of the SYSTEM under the terms and conditions of this agreement and the rules, regulations, and standards which may be adopted by the Council.

(f) Shall be liable for local costs, including acquisition of remote hardware, structural modifications, communications equipment necessary to communicate with the central site, and local conversion expense, including California State Sales Taxes on purchases, where applicable.

(g) Shall pay all monies owed PLS when due.

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

(i) Shall keep those records and statistics which may be required by the Council to document the performance of the SYSTEM.

(j) Will report to the Council the persons to receive formal notice of actions 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.

## VIII. MANAGEMENT AND CONTROL OF INDIVIDUAL LIBRARIES.

Nothing contained herein shall be deemed to limit the right of member agencies 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 governing bodies, Boards of Trustees, or Chief Administrative officers.

## IX. FUNDING

PLS may apply for and receive such grants as may be provided for by the laws of the state of California or the Federal Government.

## X. COST ALLOCATION PLAN.

(a) The Council shall determine the membership fee that shall be contributed by each participating party for the operation of the general programs of PLS, excluding the operation of System. Each jurisdiction's fee shall be according to a formula which the Council determines to be fair and equitable. This formula shall be reviewed annually. Exhibit A, attached hereto and made a part hereof, is the existing formula which shall be used until modified or amended by the Council.

(b) The Council shall also determine the share of the total to be contributed by each member for the operation of the central functions of the System. Each jurisdiction's share shall be according to a cost allocation formula which the Council determines to be fair and equitable and may differ from the membership fee for general system programs described above. The existing cost allocation formula is set forth in Exhibit B attached hereto and made a part hereof. This formula shall be reviewed annually. In addition, each jurisdiction agrees to pay for the capital costs and on-going operational expenses of those components of PLS which can be allocated to the jurisdiction directly. Such expenses may include, but are not limited to: purchase of terminals, modems, communication lines, printed forms, and postage costs, as well as maintenance and repair of equipment.

## XI. 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 to 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 shall be entitled to seek appropriate relief under this Agreement or otherwise under the law.

## XII. APPLICABLE LAW

This Agreement shall be governed by, subject to, and construed according to the laws of the State of California, with venue to lie in San Mateo County, California.

## XIII. APPEAL PROCEDURE

If any party considers that any decision of the Council, or any rule or regulation governing the operation and shared use of the system to be unfair, the Chairperson of the Council shall be notified by the party in writing that the decision is disputed, or

rule or regulation is unfair, and the reasons therefore. The Council shall then resolve the dispute within thirty (30) days and inform the party of its recommendation.

#### XIV. INSTALLATION.

It is understood that the responsibility for the installation of all remote equipment located in the libraries of each party shall rest with the vendor or its agent, unless otherwise provided for by agreement of the Council and vendor.

#### XV. CONFIDENTIALITY OF DATA.

The circulation records of all parties are considered CONFIDENTIAL regardless of the source of inquiry. Employees of each party shall have access to such records to provide for the orderly operation of each library; however, such records shall not be made available to anyone else except pursuant to such process, order, or subpoena as may be authorized by law.

Any problems or conditions relating to the privacy of circulation shall be referred to the head of the applicable library for resolution.

#### XVI. RESPONSIBILITIES OF AUTOMATED CIRCULATION SYSTEM PARTICIPATION

(a) Members of PLS who choose to own and jointly operate the PLS Automated Circulation System (called SYSTEM) shall do so under the terms and conditions of this Agreement and the rules, regulations and standards which may be adopted by the Council. They shall be liable for local costs, including acquisition of remote hardware, structural modifications, communications equipment necessary to communicate with the central site, and local conversion expense, including California State Sales Taxes on purchases where applicable.

(b) The SYSTEM will be available for use by any party hereto for circulation and other transactions on a schedule of hours to be set by the Council. The Council, through its contracts for hardware and software maintenance, shall maintain the equipment in such a fashion as to provide for downtime and response time not exceeding the limits specified in these contracts. No liability shall be assumed by the Council; however, if these limits are exceeded on occasion, it may be necessary to temporarily suspend SYSTEM availability because of operational or maintenance requirements. Whenever possible, prior notice of SYSTEM unavailability will be provided to the libraries. Such suspension shall not be deemed an unreasonable prevention or postponement of SYSTEM use by any party.

(c) The Council shall be advised in writing of any SYSTEM software or hardware enhancement desired by any party. The implementation of all such enhancements shall require the approval by majority vote of the Council members participating in the SYSTEM. If the cost of any SYSTEM enhancement, expansion or

replacement would cause an increase in a party's share of expense of 15% or greater than the previous year's budget, then that party shall have the option to negotiate for a different level of service from the SYSTEM, provided that such a different level of service would not degrade the overall SYSTEM and the cost of such change would be covered by that party.

(d) All central site hardware, including the central processing unit, console disk drives, tape drives, and associated instruments and equipment shall be owned by and be the responsibility of the SYSTEM. The rights to all software that is a part of the system shall reside with SYSTEM, subject to the terms and conditions of the Agreements with any vendor. All computer terminals, modems, and communication equipment necessary for connection to the central site hardware, and any other hardware that is located in the various service outlets operated by the members shall be owned separately by individual jurisdictions. It is understood that the members acquiring the equipment to connect to the central site hardware will acquire such equipment in accordance with the specifications furnished by PLS.

#### XVII. ADMISSION OF NEW ENTITIES.

(a) Any agency which has the power to provide library services may join PLS or SYSTEM upon the application of its governing body and upon the consent of the Council, provided that such agency has agreed to abide by all the terms of this Joint Powers Agreement. 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.

(b) Any agency agreeing to participate in the SYSTEM shall agree to pay the full cost for any modifications to the central SYSTEM which may be required as directed result of this new participation. The Council shall determine that the SYSTEM modifications which may be required will not result in a significant degradation of SYSTEM performance.

(c) Any agency agreeing to participate in the SYSTEM agrees to pay its portion of ongoing costs in such SYSTEM.

#### XVIII. MUTUAL HOLD HARMLESS AND INDEMNIFICATION.

(a) It is agreed that each party shall defend, hold harmless and indemnify PLS 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.

(b) It is further agreed that the PLS 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 PLS, its officers, agents and/or employees.

(c) In the event of concurrent negligence of one or more parties, their officers and/or employees, and PLS, 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.

#### XIX. INSURANCE.

PLS shall not commence work under this Agreement until all insurance required under this paragraph has been obtained. PLS 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 PLS 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: PLS 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: PLS 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 PLS'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, employees and servants 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.

PLS shall be responsible for defending third party actions against PLS.

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

#### XX. TIME.

Time is of the essence of this Agreement.

#### XXI. AMENDMENTS.

This Agreement may be amended by approval of two-thirds of the governing bodies of the parties hereto.

#### XXII. DISSOLUTION OF PLS

PLS shall be dissolved by approval of two-thirds of the governing bodies of the parties hereto. Disposition of assets or debts of PLS as determined by the Council shall be made in such a manner that each party shall share in the proceeds or expenses consistent with the prorata investments and prorata operating costs.

#### XXIII. WITHDRAWALS

(a) 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 governing body of the party wishing to withdraw. The signatories to this Agreement recognize that a substantial capital investment is required by each to implement and operate SYSTEM and that withdrawal from this Agreement will cause substantial hardship for all remaining parties.

(b) If a party withdraws from the Agreement according to the terms and conditions set forth herein, said party shall receive a copy of its bibliographic file, borrower file, and item file if such information has been converted and filed in the automated system, contingent on the system's capability.

(c) If a party withdraws from SYSTEM prior to two years from the effective date of this Agreement, the withdrawing party shall reimburse PLS an amount equal to any unpaid balance of that party's share of initial start-up costs and its share of initial central site operating costs.

(d) If the withdrawal from this Agreement results in a decision by the remaining parties that the SYSTEM be terminated, it shall be the responsibility of PLS to dispose

WHEREAS, ON May 4, 1988, the San Mateo County Community College District agreed to become part of the Peninsula Library System and agreed to abide by all the terms of this Joint Powers Agreement and

WHEREAS, ON June 7, 1988, the Peninsula Library System's Administrative Council accepted the San Mateo County Community College District as a member of the System.

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

SAN MATEO COMMUNITY COLLEGE DISTRICT BY:

*Glenn P. Smith*  
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Chancellor  
  
*6-13-88*  
-----  
Date

*James P. Smith*  
-----  
Associate Chancellor  
  
*6-10-88*  
-----  
Date

PENINSULA LIBRARY SYSTEM BY:

*Nancy S. Crabbe*  
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Chairperson  
  
*6/7/88*  
-----  
Date

*Lynda D. Gower*  
-----  
System Director  
  
*6/7/88*  
-----  
Date

CITY OF SAN BRUNO

By: *Shirley Winford*  
City Manager  
Date: July 3, 1985

ATTEST:

By: *Terrri Kammison*  
City Clerk  
Date: 7/3/85

CITY OF SAN MATEO

By: *W. Wong*  
City Manager  
Date: 7/2/85

ATTEST:

By: *Doris Christen*  
City Clerk  
Date: 7/2/85

CITY OF SO. SAN FRANCISCO

By: *Mark Lewis*  
City Manager  
Date: 7/9/85

ATTEST:

By: *Barbara A. Battaya*  
City Clerk  
Date: 7/9/85

COUNTY OF SAN MATEO

By: *Jacqueline Spree*  
Chairman  
Board of Supervisors  
Date: August 6, 1985

ATTEST:

BY: *Eunice M. Frecht*  
Clerk of the Board  
Date: August 6, 1985

## EXHIBIT B

SHARED AUTOMATED SYSTEM  
COST ALLOCATION FORMULA

Library	1982-83 Circulation* %		1982-83 Volumes** %		1982-83 Population***%		Total Av. %	Prior %
Burlingame	291,139	8.0	219,391	12.2	33,583	5.7	8.7	[8.3]
Daly City	327,664	9.0	151,283	8.4	79,950	13.5	10.3	[12.6]
Menlo Park	196,136	5.4	111,755	6.2	26,250	4.4	5.3	[5.3]
Redwood City	374,990	10.3	197,008	11.0	55,800	9.4	10.2	[10]
San Bruno	176,426	4.8	89,162	5.0	34,750	5.8	5.2	[5.2]
San Mateo City	520,024	14.3	320,907	17.8	82,867	14.0	15.4	[14]
San Mateo County	1,495,335	41.2	600,151	33.4	230,200	38.8	37.8	[36.8]
So San Francisco	247,328	7.0	107,712	6.0	50,100	8.4	7.1	[7.8]
Total	3,629,042		1,797,369		593,500			

\*1982-83 Circulation to Librarys' own residents. Statistics from the 1982-83 Direct Loan Survey (includes circulation to Hillsborough)

\*\*1982-83 Volumes as reported to the State Library

\*\*\*1.1.83 Projected Population statistics from the U.S. Bureau of Census

Note: Total Population of San Mateo County = 593,500 (including Hillsborough population of 10,700 allocated 2/3 to Burlingame [7,133] and 1/3 to San Mateo City [3,567])