

THE JOINT POWERS AGREEMENT
OF THE NORTHNET LIBRARY SYSTEM

THIS joint powers agreement between cooperative library systems to form the NorthNet Library System (hereinafter called "NLS") made and entered into this 8th day of May, 2009, by and between the undersigned signatories herein.

WITNESSETH

WHEREAS, the NORTH BAY COOPERATIVE LIBRARY JOINT POWERS AGENCY, the NORTH STATE COOPERATIVE LIBRARY JOINT RESOLUTION AGENCY, the MOUNTAIN-VALLEY LIBRARY JOINT RESOLUTION 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 public 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 parties hereto to provide library services, through a new and separate public agency known as NorthNet Library System ("NLS"), 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 Agreement 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. NLS 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, and as more specifically set forth herein

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 NLS and jointly make decisions regarding the implementation and management of NLS, 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 NorthNet Library System. 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, including, without

limitation, to make and enter contracts, to employ agents or employees, to contract for legal services, to acquire, hold or dispose of property, and to sue or be sued on its own name

III. ADMINISTRATIVE COUNCIL

Administrative Council (hereinafter referred to as "Council") is the governing body of NLS. The powers, composition, duties, officers, activities, and procedures for conducting the business of the Council shall be established in the Bylaws of the Administrative Council, NorthNet Library System.

IV. BYLAWS

NLS 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) The North Bay Cooperative Library System Executive Officer or his/her designee shall act as the Treasurer/Controller and fiscal agent for NLS and shall act as the depository and shall have custody of the money of NLS, 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 NLS, and provide for an annual audit of the accounts and records of NLS 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. NLS shall bear the costs of the audit.

VII. RESPONSIBILITIES OF PARTIES

Parties of NLS:

- (a) Agree to participate in the programs which are a requirement of the California Library Services Act.
- (b) Shall pay all monies owed NLS 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.

VIII. 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 NLS. Except as specifically stated in

Section IX the assets and property of each party shall remain its own.

IX. FUNDING

NLS shall provide for strict accountability of all funds and reports and disbursements. NLS 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 a minimum of the sum of \$100,000.00 (one hundred thousand dollars), cash, to the general fund of NLS, which shall be non-refundable except pursuant to Article XVIII.

X. 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 NLS. 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. Exhibit B, attached hereto and made a part hereof, is the existing formula which shall be used until modified or amended by the Council.

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 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 XIII hereof.

XII. APPLICABLE LAW

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

XIII. DISPUTE RESOLUTION PROCEDURE

If any party considers that any act or decision by NLS is unfair and injurious to it, or if the Council determines that a party's material breach has not been remedied, the process for resolving disputes will be mediation, then if necessary, binding arbitration 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. If mediation does resolve the dispute, expenses for mediation will be shared by each side equally.

XIV. ADMISSION OF NEW PARTIES

Any California Cooperative Library System operating as a joint powers agency or joint resolution agency may join NLS 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 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.

XV. MUTUAL HOLD HARMLESS AND INDEMNIFICATION

(a) It is agreed that each party hereto shall defend, hold harmless and indemnify NLS 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 NLS has procured liability insurance covering such claim.

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

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

XVI. INSURANCE

NLS shall not commence work under this Agreement until all insurance required under this paragraph has been obtained. NLS 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 NLS of any pending change in the limits of liability or of any cancellation or modification of the policy. Provided, however, NLS can satisfy these insurance obligations by providing for coverage through any of its members.

In the event of the non-fulfillment of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the System Administrator and/or Chair, at her option, may, notwithstanding any other provision of this Agreement to the contrary, immediately suspend all further work pursuant to this Agreement, pending direction from the Council.

(a) Workers' Compensation and Employer's Liability Insurance: NLS 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: NLS 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 NLS'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.

Except to the extent required by Article X, NLS, alone or through insurance, shall be responsible for defending third party actions against NLS.

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

XVII. AMENDMENTS

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

XVIII. DISSOLUTION OF NLS

NLS shall be dissolved by approval of two-thirds of the governing bodies of the parties hereto. Disposition of assets or debts of NLS as determined by the Council shall be made in accordance with the process set forth in the bylaws. After the completion of its purpose any surplus money on hand shall be returned to the members in proportion to the contributions made. For the purposes of this Agreement the “conclusion of its purpose” shall occur upon dissolution of NLS.

XIX. 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 nine 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 and presented in writing to NLS. Withdrawing party shall not be entitled to any refund of its contributions, nor to any share of NLS assets unless NLS dissolves.

XX. TERMS OF AGREEMENT

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

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

NORTH BAY COOPERATIVE LIBRARY SYSTEM ATTEST:
JOINT POWERS AGENCY

By: _____ By: _____
System Chair System Clerk

Date: _____ Date: _____

NORTH STATE COOPERATIVE LIBRARY ATTEST:
SYSTEM JOINT RESOLUTION AUTHORITY

By: _____ By: _____
System Chair System Clerk

Date: _____ Date: _____

MOUNTAIN-VALLEY LIBRARY SYSTEM ATTEST:
SYSTEM JOINT RESOLUTION AUTHORITY

By: _____ By: _____
System Chair System Clerk

Date: _____ Date: _____

NORTHNET LIBRARY SYSTEM
JOINT POWERS AGENCY

By: _____ By: _____
System Chair System Clerk

Date: _____ Date: _____