

**JOINT EXERCISE OF POWERS AGREEMENT
TO PROVIDE FOR OWNERSHIP, OPERATION, GOVERNANCE
OF AN ONLINE LIBRARY SYSTEM,
AND TO PROVIDE VARIOUS LIBRARY SERVICES
COOPERATIVELY**

This agreement, made and entered into this, 8th day of July, 1997, by and between the Cities of San Rafael, Mill Valley, Sausalito, the County of Marin, and the Belvedere-Tiburon Library Agency

WITNESSETH

WHEREAS, the Cities of San Rafael, Mill Valley, Sausalito, the County of Marin, and the Belvedere-Tiburon Library Agency possess the common powers to provide library services; and

WHEREAS, the parties participate in two statewide programs to provide free and equal access to library services and resources. Those programs are the Universal Borrowing Program (California Library Services Act, Art. 4, Sec. 18731) and the Equal Access Program (California Library Services Act, Art. 5, Sec. 18743); and

WHEREAS, the parties are authorized to contract with each other for the joint exercise of any common power pursuant to California Government Code Sections 6500-6514; and

WHEREAS, the Cities of San Rafael, Mill Valley, Sausalito, the County of Marin, and the Belvedere-Tiburon Library Agency with the assistance of a grant from the Marin Community Foundation have purchased an integrated online library system; and

WHEREAS, the Cities of San Rafael, Mill Valley, Sausalito, the County of Marin, and the Belvedere-Tiburon Library Agency desire to improve library services to the residents of Marin through the operation of a shared online library system, and by providing various library services cooperatively; and

WHEREAS, the Cities of San Rafael, Mill Valley, Sausalito, the County of Marin, and the Belvedere-Tiburon Library Agency believe that the greatest possible benefit from the use of public funds may be realized through the shared ownership and operation of an online library system, and by providing various library services cooperatively.

**DUPLICATE
ORIGINAL**

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter stated and the performance thereof, the parties hereto do agree as follows:

I. PURPOSE

The parties to this agreement agree to provide various library services cooperatively and to jointly own, operate, maintain, and manage an online library system (hereinafter referred to as System). The parties shall have equal access to the full range of services available from the system and shall jointly make decisions regarding the operation of the system in accordance with the terms of this agreement.

II. TERM

This agreement may continued until rescinded or terminated.

III. NAME

The system shall be known by the acronym **MARINet**.

Marin Automated Resources and Information Network

IV. DEFINITIONS

Unless the context otherwise requires, the words and terms defined herein shall, for the purpose of this agreement, have the meaning specified below.

Aggregate Circulation means the combined "Total Circulation" of the participating public agencies.

Aggregate Population means the combined "Total Population" of the participating public agencies.

Base Level System means the fundamental components, described in *Section VI.*, necessary to perform circulation, database management, public access catalog, acquisitions and serials control functions.

Capital Replacement Fund means a reserve established to replace central site equipment when needed. Parties to this agreement will contribute to the fund based on the cost sharing formula.

Central Site means the centralized physical location of equipment, software, supplies, and personnel necessary for operation of the system.

Central Site CPU means any computer or device required for daily operation or backup. This shall include processors, controllers, disk drives required for online operation or backup, tape drives required to load data or provide backup, printers used at the central site, and system operator consoles or terminals.

Cost sharing Formula means the distribution of costs among the participating public agencies for operation of MARINet as described in section IV of this agreement.

Database means the machine readable files of bibliographic, item, patron and other records created and stored by the system.

Fiscal Year means the period from July 1 through June 30 of the following year for purposes of accounting and budgeting.

Governing Board means the governing body of the system and shall include the library director or designated alternate of each public agency which is party to this agreement.

Holdings (a component of the cost sharing formula) means the total number of items held in each of the collections of the participating public agencies

Library Director means the head librarian who is officially charged by a legal governing entity such as a county board of supervisors, a city council or other governing body to oversee and direct library service for that entity's library or library jurisdiction.

Majority Vote means a vote of at least two members of the governing board whose libraries together constitute 51% ownership of the system as defined by the current cost sharing formula.

Online Databases means the machine readable files of information whether locally produced or licensed from a commercial vendor that are loaded onto the system or accessed by a terminal on the system that can be searched by a user of the online public access catalog.

Online Public Access Catalog means the software module designed to be used by the public and staff of the library to search the database of bibliographic and item records and online databases.

Peripheral Equipment means the telecommunication equipment, terminals, printers, barcode readers, and other equipment connected to the system, other than those at the central site.

Record means all the machine readable information kept about one title, item, or patron that is arranged and stored in files on the system.

System means the central site CPU, all central site telecommunications equipment, the license to use the software and machine readable files created as a result of the use of the software and peripheral equipment.

Telecommunications Equipment means the equipment needed to transmit and receive data over a distance from the central site CPU to any remote site.

Total Circulation (a component of the cost sharing formula) means annual circulation of library materials to registered borrowers of each of

the participating public agencies at all libraries operated by that public agency.

Total Population (a component of the cost sharing formula) means the number of residents within each of the participating public agencies. This figure will derive from the population of each participating public agency as certified by the State of California in annual Public Library Fund allocations.

Unanimous Vote means the complete agreement of all members of the MARINet Governing Board.

Vendor means the provider of the automation system including system hardware, system maintenance, and the license to use the system software.

V. COST SHARING FORMULA:

- a. Costs for operating and maintaining the system shall be borne by each participating public agency according to a cost-sharing formula. The cost-sharing formula shall also be used to determine each participating public agency's weighted vote on the MARINet Governing Board as defined in *Section VII:d* of this agreement.
- b. The current cost sharing formula developed by the library directors of the parties to this Agreement, reflects the extent to which each public agency will impact the resources and capacity of the system. Each public agency's share is defined as the percentage of the cost which is equivalent to the average of the following three figures.
 1. its percentage of the aggregate circulation of the participating public agencies.
 2. its percentage of the aggregate holdings of the participating public agencies.
 3. its percentage of the aggregate population of the participating public agencies.

Data for "circulation" and "holdings" is derived from the system, and data for "population" is derived from annual population figures certified by the State of California Department of Finance for Public Library Fund allocations.

- c. The cost sharing formula shall be applied to all acquisition and operating costs for the system including telecommunication costs unless otherwise specified elsewhere in this agreement, and/or agreed to by unanimous vote of the Governing Board.
- d. The cost sharing formula percentages shall be adjusted annually by the Governing Board to reflect current data.

- e. Any addition or modification to the three elements comprising the cost sharing formula shall require a unanimous vote of Governing Board

VI. BASE LEVEL SYSTEM AND SERVICES

The base-level system is jointly owned and operated by the parties to this agreement, and it is defined as the fundamental central site hardware and software components necessary to perform circulation, database management, public access catalog, acquisitions and serials control functions. Base-level services are defined as those services performed by central site staff necessary to support system functions referred to above in this section of the agreement.

VII. GOVERNANCE

- a. The system shall be governed by a governing body hereafter referred to as the Governing Board. The Governing Board shall include the library director or designated alternate of each public agency which is party to this agreement.
- b. A quorum shall be constituted by four voting members of the Governing Board, one of which shall be Marin County Free Library. A quorum shall be necessary to hold a meeting of the MARINet Governing Board..
- c. A majority vote shall consist of at least two members of the governing board whose libraries together constitute 51% ownership of the system as defined by the current cost sharing formula . A majority vote shall be required for all decisions regarding the implementation and management of the system except those stipulated in this agreement as requiring a unanimous vote.
- d. Voting rights shall be weighted according to each public agency's percentage share of the cost of operating the system as defined by the annually adjusted cost-sharing formula.
- ✓ e. Any decisions, and/or policies which require monetary outlay from any party to this Agreement greater than is necessary to fund the "Base Level System" (See *Section VI*) shall require a unanimous vote of the Governing Board, and action by each public agency's City Council, Board of Supervisors, or other governing body appropriating the funds to implement said decision and/or policy.
- f. At the first meeting of each fiscal year the Governing Board shall elect a Chairperson to run the meetings of the Governing Board and a Vice-Chair to act in the stead of the Chairperson when she/he is unable to attend a meeting of the Governing Board.

VIII. POWERS AND RESPONSIBILITIES OF THE GOVERNING BOARD

The powers and responsibilities of the Governing Board shall include the following:

- a. The Governing Board shall be responsible for the procurement, installation, implementation and general management of the system, pursuant to the terms and conditions of this Agreement and all agreements concerning system operation.
- b. Approve an annual budget contingent on local appropriation of funds by each participating public agency.
- c. Direct the administration of this Agreement.
- d. Formulate policy, goals and standards for use of the system.
- e. Evaluate system performance and develop plans for modifications, upgrades and new services, including the addition of online databases.
- f. Establish guidelines for admittance of new system users
- g. Establish an appropriate committee structure that will advise the Governing Board and on matters pertaining to the daily operation of the system, including policies and procedures.
- h. Determine what system records are to be maintained, procedure for their maintenance, and policies on confidentiality and for disclosure of the records. It is understood that the confidentiality of MARINet records is subject to the California Public Records Act, Government Code Sections 6250 et seq.
- i. Determine appropriate staffing requirements and staffing levels for the central site.
- j. Periodically review this agreement

IX. MARINET BUDGET

MARINet's fiscal year shall be from July 1 to June 30 of the next calendar year to coincide with the fiscal year of the fiscal agent. MARINet shall adopt its annual budget by March 15 prior to the next fiscal year. Each participating public agency shall annually, upon local adoption of its own budget, appropriate its share of the MARINET budget. By September 1st of the current fiscal year, each participating public agency shall pay an amount equal to 100% of its share of the annual MARINet operating budget, as determined by the current cost sharing formula,.

X. FISCAL AGENT

- a. The parties to this agreement shall designate a fiscal agent for MARINet.
- ✓ b. The fiscal agent shall provide quarterly financial reports detailing all budgetary expenditures, allocations, and related cost accounting information.
- c. The Governing Board shall designate its fiscal year to coincide with that of the fiscal agent, and shall be responsible for maintenance of a current inventory of the property owned by MARINet. The accounts and records of MARINet shall be subject to examination under the audit process provided by the fiscal agent. Cost associated with such examination shall be borne by members of this Agreement according to distribution percentages assigned by the cost allocation formula.
- ✓ d. The fiscal agent shall establish an interest-bearing trust account to accumulate annual contributions for system upgrade/replacement.
- e. The fiscal agent shall be compensated for services rendered. Compensation shall be distributed among participating public agencies based on the cost sharing formula.
- f. The fiscal agent shall provide payroll and personnel services of MARINet system staff pursuant to the direction of the Governing Board.

XI. RIGHTS OF PARTICIPATING PUBLIC AGENCIES

- a. Each participating public agency, at its own expense, shall have a right to a copy of its own collection database, borrower, circulation, and acquisition records. Each participating public agency agrees to comply with the California Public Records Act, Government Code Sections 6250 et seq.
- b. It is the intent of all parties that each participating public agency will have equitable access to the agreed upon range of system services as defined in *Section VI*.
- c. It is the intent of all parties that each participating public agency will be accorded equitable treatment in daily operation and management of the system, in future planning for the system, and in all decisions of the Governing Board.
- d. Nothing in this Agreement shall be construed as restricting the right of a member public agency to independently make local decisions and set local policies about the administration, management, implementation and control of its own library, library service, and library resources, and to operate according to the policies and rules established by the public agency's own governing body.

- ✓ e. A participating public agency may, at its own expense, purchase additional software for the central site CPU provided said software does not result in a degradation of system performance, or compromise system integrity, and said purchase is approved by a majority vote of the Governing Board.

XII. RESPONSIBILITIES OF PARTICIPATING PUBLIC AGENCIES

Participating public agencies shall:

- a. Participate in the use and operations of the system under the terms and conditions of this Agreement and the rules and regulations adopted by the Governing Board.
- b. Be liable for local costs, including acquisition of peripheral and telecommunications equipment, structural modifications, and local conversion expense.
- c. Regularly participate in meetings and deliberations of the Governing Board.
- d. Keep those records and statistics which may be required by the Governing Board to document performance, maintenance and cost of the system.
- e. Commit staff to serve on MARINet committees to provide user input and make recommendations to the Governing Board.
- f. Input and delete all data into the system, and maintain system databases and patron records according to the rules and regulations established by the Governing Board.
- i. Make a diligent, good faith effort to work with participating public agencies to preserve the integrity of the system database and equipment for the good of all participating public agencies and system users.

XIII. ADMISSION OF NEW ENTITIES

- a. Any public agency which has the authority to provide library services may join MARINet upon application of its governing body, and by majority vote of the Governing Board, provided that such agency has agreed to abide by all the terms of this Joint Powers Agreement. The Governing Board shall by unanimous vote determine the amount of money that shall be paid by the new agency as a prerequisite to its becoming a participant.
- b. Any public agency agreeing to participate in MARINet shall agree to pay the full cost for any modifications to the central system which may be required as a direct result of this new participation. The Governing Board shall determine that the system modifications which may be

required will not result in a significant degradation of system performance.

- c. Any public agency agreeing to participate in the system agrees to pay its portion of ongoing costs in such system and in its share of the capital replacement fund.
- d. Any public agency or private entity which provides library or information services may contract with MARINet for services with the unanimous approval of the Governing Board. The Governing Board shall have sole discretion to determine if it is appropriate and in the public interest to contract with private entities providing library or information services. Terms of such a contract shall be determined by unanimous vote of the Governing Board.

XIV. MODIFICATION OF THIS AGREEMENT

This Agreement may be modified or amended only in writing by a unanimous vote of the Governing Board and approval by each of the parties hereto. The Cost Sharing Formula may be adjusted if it is materially affected by such modification or amendment, or by the admission of new entities.

XV. CORRECTIVE AND REMEDIAL MEASURES

Whenever any party believes that another party has committed a remediable breach of any material obligation set forth in this Agreement, it may give written notice of the alleged breach to the other party, with copies to other participating members, setting forth with reasonable specificity the nature of the alleged breach. The party receiving such notice shall use its best efforts to promptly remedy the breach and 1) shall inform the party giving written notice of the nature of the remedial actions planned and taken, or 2) shall respond to any such notice, with an explanation that sets forth reasonable cause of its action. Any remedial action shall occur within thirty (30) days of notice of the alleged breach unless otherwise agreed to by the disputing parties. If no action has been taken to correct the alleged breach within thirty (30) days, the complaining party may submit the matter to mediation following notice to all parties to this Agreement. The matter shall be submitted to the American Arbitration Association unless another entity or person is mutually agreed upon by the disputing parties. If mediation does not resolve the dispute, the party giving the notice shall be entitled to seek appropriate relief under this Agreement or otherwise under the law.

XVI. 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 the County of Marin, California.

XVII. WITHDRAWALS

Withdrawal from this Agreement shall be accomplished by non-appropriation of funds of a participating public agency. Withdrawal from this Agreement shall be subject to the following conditions:

- 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 (6) months written notice to the Governing Board. 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 that withdrawal of any party to this Agreement will cause substantial economic 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 machine readable copy of its bibliographic file, patron file, item file, and transaction file if such information has been converted and filed in the system, and if the system is capable of producing said files. Removal from the system of all machine readable files of the withdrawing party shall be at the expense of withdrawing party.
- c. Any party withdrawing from this agreement shall reimburse MARINet any unpaid balance of said party's share of the current fiscal year operating costs, and, for all expenditures made in accordance with the terms of this Agreement that are unpaid at the time of withdrawal. The withdrawing party shall not be entitled to any compensation from MARINet, nor shall it be entitled to any monies in the MARINet capital replacement fund.
- d. If withdrawal from this Agreement results in a unanimous decision by the remaining parties that the system be terminated, it shall be the responsibility of MARINet to dispose of all equipment at fair market value and reimburse the remaining parties from the proceeds of disposal in accordance with the cost sharing formula.
- e. Upon withdrawal of a party from the system, the cost sharing formula shall be adjusted proportionately among the remaining parties to this Agreement. Ownership of the system will then be adjusted in accordance with the cost sharing formula among the remaining parties named in this Agreement.

XVIII. DISSOLUTION OF MARINet

MARINet may be dissolved by unanimous approval of the parties to this agreement. Disposition of assets or debts of MARINet as determined by the Governing Board shall be made in such a manner that each party shall share in the proceeds or expenses consistent with the cost sharing formula.

XIX. CONFIDENTIALITY OF DATA

Except as otherwise provided by the California Public Records Act, Government Code Sections 6250 *et seq*, the circulation records and patron files 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, other than the individual to whom the records pertain, except pursuant to such process, order, or subpoena as may be authorized by law. All parties to this agreement shall adopt a common policy regarding the confidentiality of circulation records and patron files. All of the participating public agencies agree that all of its employees will be informed of the requirement that all circulation records and patron files be kept confidential. All the parties agree to exercise due diligence in maintaining the confidentiality of all circulation records and patron files.

XX. LIABILITY

Each participating public agency shall be responsible for a pro-rata share, according to the current cost sharing formula, of losses or damages as a result of the operation of the system. No additional insurance policy shall be required. The public agencies that are party to this agreement are self-insured.

XXI. NON-DISCRIMINATION

Each Party shall not discriminate against any employee or applicant for employment because of race, religion, sex, sexual orientation, disability, age or national origin. Each Party shall take affirmative action to assure that applicants are employed, and that employees are treated during the employment without regard to their race, religion, sex, sexual orientation, disability, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or forms of compensation, and selection for training, including apprenticeship. Each Party shall not, in connection with the employment, advancement or discharge of employees, discriminate against persons because of their age except upon the basis of a bona fide occupational requirement, retirement plan or statutory regulation. Each Party shall not employ discriminatory

practices against any person in the performance of any services hereunder on the basis of race, religion, sex, sexual orientation, disability, age or national origin, except as required by law.

XXII. NOTICE

Any notices provided for herein are necessary to the performance of this Agreement and shall be given in writing by personal delivery or by prepaid first-class mail addressed as follows:

Marin County Free Library
County Librarian
Marin County Free Library
Civic Center, Administration Bldg.
San Rafael, CA 94903

Mill Valley Public Library
City Librarian
Mill Valley Public Library
375 Throckmorton Ave.
Mill Valley, CA 94941

San Rafael Public Library
Library Director
San Rafael Public Library
1100 E Street
San Rafael, CA 94901

Sausalito Public Library
City Librarian
Sausalito Public Library
420 Litho Street
Sausalito, CA 94965

Belvedere-Tiburon Library Agency
Library Director
1501 Tiburon Blvd
Tiburon, Ca. 94920

XXIII. ENTIRE AGREEMENT

This Agreement including any exhibits referenced herein supersedes in its entirety the Agreement by and among the Cities of San Rafael, Mill Valley, Sausalito and the County of Marin entered into in December of 1993 and embodies the entire agreement between the parties hereto, there being no inducements, promises, terms, conditions, or obligations made or entered into by the parties to this Agreement other than those contained herein.

IN WITNESS WHEREOF, the parties hereto have caused their duly
authorized representatives to execute this agreement the day and year first
above written.

COUNTY OF MARIN

Harry J. Moore
CHAIR, BOARD OF SUPERVISORS

ATTEST:

M. Mikub
CLERK OF THE BOARD

CITY OF SAN RAFAEL

Alfred A. Ag
MAYOR

ATTEST:

Jeanne M. Lencini
CITY CLERK

CITY OF MILL VALLEY

Betsy Cutler
MAYOR

ATTEST

A. Dunn
CITY CLERK

CITY OF SAUSALITO

Paul E.
MAYOR

ATTEST

Brackner
CITY CLERK

BELVEDERE TIBURON LIBRARY AGENCY

Richard D. Roggenme
Chair

Carol C. Farrell
Vice-Chair