

JOINT EXERCISE OF POWERS AGREEMENT FOR
THE SOUTH BAY COOPERATIVE LIBRARY SYSTEM

THIS AGREEMENT, made and entered into this ____ day of _____, 1975, by and between the parties signatory hereto.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO, as follows:

A. WHEREAS, this agreement entitled "Joint Exercise of Powers Agreement for the South Bay Cooperative Library System" shall hereinafter be referred to as "Agreement"; and

B. WHEREAS, the South Bay Cooperative Library System shall, where appropriate, hereinafter be referred to as "SYSTEM"; and

C. WHEREAS, SYSTEM shall initially be composed of public agencies formerly belonging to the Camino Real Library System (the Cities of Santa Clara, San Jose and Sunnyvale) and the Santa Clara Valley Library System (the County of Santa Clara and the City of Mountain View); and

D. WHEREAS, the original participants and signatories to this Agreement are:

- 1) The City of Mountain View, a municipal corporation of the State of California, hereinafter referred to as "Mountain View";
- 2) The City of San Jose, a municipal corporation of the State of California, hereinafter referred to as "San Jose";
- 3) The City of Santa Clara, a municipal corporation of the State of California, hereinafter referred to as "Santa Clara";
- 4) The City of Sunnyvale, a municipal corporation of

the State of California, hereinafter referred to as Sunnyvale"; and

- 5) The County of Santa Clara, a political subdivision of the State of California, hereinafter referred to as "County";

The foregoing five (5) public agencies are, in the proper context, hereinafter collectively referred to as "Original System Participants" or "System Participants" (which term shall include additional public agencies associating at a subsequent point of time).

E. WHEREAS, each of the parties to this Agreement is a "public agency" as this term is defined in Section 6500 of the Government Code of the State of California; and

F. WHEREAS, pursuant to Title 1, Division 7, Chapter 5, Article I (commencing Section 6500) of the Government Code of the State of California (commonly known as the Joint Exercise of Powers Act), two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties; and

G. WHEREAS, the System Participants find that it would be to their mutual advantage and to the public benefit to expand and coordinate their public library services; and

H. WHEREAS, it is the desire of the System Participants to expedite the application process for grants from any source, including, but not limited to, those grants from the State of California, pursuant to the Public Library Services Act (commencing Section 27111 of the Education Code) of the State of California, for the development and improvement of public library services; and

I. WHEREAS, System Participants, with their prior approval, authorize Santa Clara, as the System's fiscal agent, to make

application for grants from time to time on behalf of all the SYSTEM to any grant source, including the State of California pursuant to the Public Library Services Act; and

J. WHEREAS, the System Participants desire, by means of this Agreement to expedite the obtaining of grants, to establish an Agency and procedures for expansion and coordination of their respective public library services, to provide for the general direction of such Agency's policies, and to make it understood by all System Participants that:

1) This Agreement is being executed initially by certain public agencies, but it is the intent of the Original System Participants that others may become participants (Additional System Participants) at a subsequent point of time in the SYSTEM.

2) All parties hereto desire that reasonable provisions be made for withdrawal from such Agency.

NOW, THEREFORE, IT IS HEREBY FURTHER AGREED BY THE PARTIES HERETO, as follows:

ARTICLE I

Effective Date of Agreement

1. Effective Date of Agreement

This Agreement shall become effective on the date of its execution, as hereinabove stated, for the Original System Participants. The Agreement shall be effective as to Additional System Participants on the date indicated on its signatory line.

ARTICLE II

Purposes

1. Purpose of Agreement

It is the purpose of this Agreement to establish, pursuant

to the Joint Exercise of Powers Act, an agency to be known as the South Bay Cooperative Library System for and with the purpose to implement, carry out, and pay for the expansion and coordination of the public library services of each System Participant. Said purpose is more fully set forth in the respective plan of service and application for each grant obtained, or extension thereof. Said plans of service and/or applications for grants are on file in the office of the City Clerk of Santa Clara. Said plans of service and/or applications are incorporated herein by this reference.

ARTICLE III

Organization - South Bay Cooperative Library System

1. Establishment of the SYSTEM

There is hereby established pursuant to the Joint Exercise of Powers Act (Section 6500 et. seq. of the Government Code of the State of California) an agency to be named the South Bay Cooperative Library System ("SYSTEM"), a public entity separate from the parties to this Agreement.

2. Governing Body - The Executive Council

The governing body of the SYSTEM shall be an Executive Council (hereinafter "Council") composed of the Chief Librarian from each of the Original System Participants and the Chief Librarian of those public agencies which associate at a later date. Each System Participant shall have one representative on the Council.

Said Council shall be the administering agency of the SYSTEM and, as such, shall be vested with the powers set forth herein and shall execute and administer this Agreement in accordance with the purposes and functions provided herein.

3. Organizational Meeting

As soon as practicable after the execution of this Agreement by the Original System Participants, each System Participant shall appoint its Chief Librarian to the Council and said representatives shall hold an organizational meeting to:

a) Elect a chairperson and such other officers as the Council shall find appropriate to serve the Council at its pleasure for one year from the date of the election. The other officers, if any, shall have the usual and customary duties of such officers as determined by the Council. A vacancy in any office shall be filled for the balance of the term by majority vote of all members of the Council.

b) Provide general directives for the work of SYSTEM.

c) Take appropriate measures to meet the financial requirements of SYSTEM and direct payment to be disbursed by the fiscal agent for expenses incurred by SYSTEM.

d) Determine whether or not the Council desires to establish an Executive Committee, and/or such other committees as it shall find appropriate, or postpone its decision to a later date. Committees shall have the duties, and be composed in the manner and number deemed appropriate by the Council.

4) Duties of Chairperson

The Chairperson of the Council shall preside at the meetings of the Council and perform such other duties as the Council shall instruct. The Chairperson of the Council shall rotate by election once a year among participating librarians.

5) Meetings of Council

The Council shall meet at least once a month. The Chairperson shall provide each of the parties to this Agreement with

reasonable notice in writing of meetings of the Council. The Council shall meet at such other time or at the same time as called upon by the Chairperson or by a simple majority of the Council, after reasonable notice in writing of the meeting and any business to be acted upon by the Council has been given to all Council members.

The affirmative vote of a majority of the entire Council ("Original System Participants" and "Additional System Participants") shall be necessary to take action.

Each System Participant shall designate an alternate who shall, in the absence of the Chief Librarian, have the power to vote in the place and stead of the Chief Librarian.

6. Council to Make Policy Determinations

The Council shall enunciate policies, establish and review programs, and decide manner and purpose for which all funds shall be disbursed.

7. Council Adoption of By-Laws

The Council may adopt by-laws for the conduct of its business as it deems desirable to best carry out the purposes of this Agreement.

8. Preparation of Quarterly Reports

The Council shall be responsible for the preparation of quarterly reports to be distributed to the appropriate public agencies.

ARTICLE IV

Membership

1. Additional System Participants

Upon approval by each of the governing bodies of the

respective System Participants, any public agency (as defined in Government Code Section 6500) may become a System Participant. The Additional System Participants which are subsequently added to this Agreement in accordance with the term and conditions hereof shall become and be party to this Agreement on the effective date of such additions (its execution of this Agreement) and shall thereafter enjoy the rights and perform the duties required of it in accordance with the terms and conditions hereof. This privilege to become a System Participant is additionally subject to the condition precedent that funds for a public library services grant are available through the Public Library Services Act, funds are available from other sources, or the Additional Participants provide an amount of money and/or services determined by the Council to the SYSTEM.

2. Withdrawal from the Agreement

Any System Participant may withdraw from the SYSTEM or not participate in a grant program by resolution of its governing body. Withdrawal notice of any System Participant shall be given in writing to the Council at a regular meeting at least sixty (60) days before the effective date of such withdrawal or non-participation. Withdrawal or non-participation in specific grant program(s) by one or more System Participants shall not invalidate this Agreement as to the remaining System Participants. If applicable, said withdrawing System Participant is obligated to pay any indebtedness to the SYSTEM prior to the effective date of said withdrawal.

ARTICLE V

Powers and Functions

1. The SYSTEM's Powers

a) The SYSTEM has any and all the powers authorized by law to all of the parties hereto, and separately to the Agency herein created, relating to, without limiting to, the specific items, the acquisition, financing, disposition, use, disbursement, operation and maintenance of materials, facilities, and information for the joint use of System Participants. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner according to the method provided in this Agreement. All powers common to the System Participants are specified as powers of the SYSTEM.

b) After the SYSTEM has made application for and received grant(s) from any source, including the State of California, on behalf of all the System Participants for the purpose of implementing and carrying out the purposes of the specific grant(s), the SYSTEM is hereby authorized to:

1) Receive, expend and disburse all funds contributed to the SYSTEM from whatever source and to receive and distribute personnel, equipment and property for the SYSTEM.

2) To do all acts necessary for the exercise of the powers hereinabove specified in this Article V for the purposes hereinabove specified, including but not limited to, any or all of the following:

- (a) To make and enter into contracts;
- (b) To employ agents and employees;
- (c) To acquire, construct, manage, maintain, operate, hold or dispose of property (real and personal);
- (d) To incur debts, liabilities or obligations which do not constitute a debt, liability or obligation of any System Participant;

(e) And to sue and be sued in its own name.

3) The powers indicated hereinabove are to be exercised subject to:

(a) Such restrictions upon the manner of exercising such power as are imposed upon Santa Clara in its exercise of similar powers, as provided in, and for the purpose of, Section 6509 of the Government Code of the State of California; the manner in which the SYSTEM, the administering agency, shall exercise its powers and perform its duties, is and shall be subject to restrictions on the manner in which Santa Clara, while it is a party hereto, could exercise such powers and perform such duties; the powers conferred herein shall not be subject to any restrictions applicable to the manner in which any other System Participant could exercise such powers or perform such duties, whether such System Participant is a party to this Agreement or not;

(b) Such restrictions as are set forth in this Agreement;

(c) Such restrictions as may be set forth in a grant agreement which SYSTEM will enter into with the State of California or any other source of grants for moneys with which to finance the SYSTEM.

ARTICLE VI

Accountability for Funds and Property

1. Santa Clara to Serve as Fiscal Agent

Santa Clara is hereby designated to be the fiscal agent of the SYSTEM. There shall be strict accountability of all funds and a report of all receipts and disbursements.

2. Treasurer

The Director of Finance of Santa Clara shall act as Treasurer and shall be the depository and have custody of all the moneys received by Santa Clara on behalf of all System Participants from any source for implementation and operation of SYSTEM. The Treasurer shall:

a) Receive and receipt for all said money of the SYSTEM and place it in the treasury of Santa Clara to the credit of the SYSTEM;

b) Be responsible upon his official bond for safekeeping and disbursement of all SYSTEM money so held by him;

c) Pay, when due, out of SYSTEM money so held by him, all sums due only upon warrants or checks issued by the Auditor for the SYSTEM;

d) Verify and report in writing on the first day of July, October, January and April of each year to the SYSTEM and System Participants the amount of said money he holds for the SYSTEM, the amount of receipts since his last report, and the amount paid out since his last report;

e) Establish such funds and accounts as may be required by good accounting practice.

3. Auditor

The City Clerk of Santa Clara shall perform all functions of Auditor or controller and he shall:

a) Draw warrants or checks to pay demands against the SYSTEM;

b) He shall issue said warrants or checks to pay demands against the SYSTEM only after said demands have been approved by the Chairperson of Council, or, in his or her absence, by the next

highest Council officer available;

c) Cause a contract to be made with a certified public accountant or public accountant to make an annual audit of the accounts and records kept by Santa Clara with respect to SYSTEM's moneys. The minimum requirements of such audit shall be those prescribed by the State Controller of the State of California for special districts under Section 26909 of the Government Code, and shall conform to generally accepted auditing standards. A report of such audit shall be filed as public records with each of the Cities and also with the County Auditor of the County of Santa Clara. Such report shall be filed within twelve (12) months of the end of the fiscal year under examination. All costs of the audit, including contracts with, or the employment of, certified public accountants or public accountants in making an audit pursuant to Section 6505 of the Government Code, shall be borne by the SYSTEM and shall be a charge against the unencumbered funds of SYSTEM available for such purpose.

4. Property Custodian

The City Librarian of Santa Clara shall have care and custody of all property delivered to the SYSTEM pursuant to this Agreement in connection with the SYSTEM. When all or any part of said property is delivered to another System Participant, its head or chief librarian shall become Custodian for said property so delivered. The Custodian of any said property shall keep adequate and complete records of all said property in his or her custody and shall be responsible for its safekeeping and protection.

5. Bonds

Each such public officer who shall have charge of, handle,

or have access to property of the SYSTEM shall file with Santa Clara an official bond in an amount to be determined from time to time by the Council.

ARTICLE VII

General Provisions

1. Notice of Formation of an Agency to the California Secretary of State

The Council shall cause notice to be given to the California Secretary of State, pursuant to Government Code Section 6503.5, of the formation of SYSTEM. Said notice shall be given within thirty (30) days of said formation.

2. Termination of SYSTEM

SYSTEM shall continue to exercise the power herein conferred until such time as all System Participants agree to terminate SYSTEM.

3. Disposition of Property

Subject to the provisions of the grants obtained by SYSTEM, upon termination of this Agreement, all property of the SYSTEM shall belong to and be distributed to said System Participants, to be divided among them in the following manner:

Such property shall be distributed in the same proportion as the population of each System Participant in accordance with the latest official census or in such other manner as agreed upon by a majority of the System Participants and approved by the State of California and/or the United States.

4. Contribution of Payments and Advances, Personnel, Equipment and Other Property

a) Any contribution or advancement of funds to SYSTEM from the treasury of a System Participant shall be repaid by SYSTEM unless

contributed on the basis it would not be repaid.

b) When personnel, equipment or other property of a System Participant is utilized, the System Participant shall not be reimbursed unless the Council requested said item on the basis it would be paid for, or the Council determines that it would be inequitable not to pay for said item.

c) Any repayment is subject to the availability of funds for the specific plan of service that the funds, personnel, equipment or other property were utilized for.

5. Severability

It is hereby declared to be the intention of the signatories of this Agreement that the paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or article of this Agreement shall be declared unconstitutional or invalid for any reason by the valid judgment or decree of the court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs, clauses, phrases, sentences or articles of this Agreement.

6. Successors, Assignment

This Agreement shall be binding upon and shall inure to the benefit of the successors of the System Participants. Except to the extent expressly provided herein, none of the System Participants may assign any right or obligation hereunder without the consent of all the others.

7. Debts of SYSTEM

None of the debts, liabilities or obligations of the SYSTEM shall be the debts, liabilities or obligations of any of the System

Participants unless assumed in a particular case by resolution of the governing body of the member to be charged.

8. Insurance

The Council is authorized to procure public liability and other insurance it deems advisable to protect the SYSTEM and each of the parties hereto, charging the cost thereof to the operating cost of the SYSTEM.

9. Privileges, Immunities, Exemptions

All the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all provisions, all pension, relief, disability, workman's compensation, and other benefits which apply to the activities of officers, agents or employees of any such agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them in the same degree and extent when engaged in the performance of any of their functions or duties extraterritorially under the provisions of the Joint Exercise of Powers Act and as provided by law.

10. Notice

All notices required or given are given pursuant to this Agreement shall be deemed properly served when deposited, postage prepaid, in the United States mail, addressed to each signatory party at the address indicated on this Agreement adjacent to the signature line of each party.

11. Amendments to Agreement

No amendment to this Agreement shall be valid unless made in writing by the governing bodies of the System Participants and signed by an appropriate official of the System Participant. Notice

of any such amendment shall be given to the California Secretary of State within thirty (30) days of the effective date of said amendment.

12. Section Headings

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

13. Execution in Multiple Counterparts

To expedite the execution of this Agreement, it shall be executed in multiple counterparts. Each such counterpart shall be regarded as an original agreement after each System Participant has executed its agreement. After an executed counterpart has been received from each System Participant by Santa Clara, the executed agreements will be maintained by Santa Clara. Santa Clara will then resubmit to each System Participant five (5) copies of the signature pages for re-execution by it. The five (5) copies of the signature page will be re-executed in turn by each System Participant. After all copies have re-executed the signature pages, each shall receive a fully executed copy for their files.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day, month and year hereinabove first written or executed thereafter the day, month and year appearing opposite each party's signature.

CITY OF MOUNTAIN VIEW

ATTEST: Jean Nilsson
City Clerk

APPROVED FOR FORM:
Ronald A. Cote
Asst City Attorney

540 Castro St., Mt. View 94041
Address

By Judith Ross
Date October 27, 1975

CITY OF SAN JOSE

FRANCIS L. GREINER
ATTEST: Doris Kowalski Deputy
City Clerk

APPROVED FOR FORM:
Anne L. Parent
Deputy City Attorney

801 N. First Street, San Jose 95110
Address

By Janet Hyles Mayor
Date August 27, 1975

CITY OF SANTA CLARA

ATTEST: Pat Malick
City Clerk

APPROVED FOR FORM:
Michael R. Downey
Deputy City Attorney

1500 Warburton Ave., S.C.
Address

By Ray Mayor
By Al Kowalski City Manager
Date August 5, 1975

CITY OF SUNNYVALE

ATTEST: Ann
Deputy City Clerk

APPROVED FOR FORM:
W. J. ...
Deputy City Attorney

456 W. Olive Avenue, Sunnyvale
Address

By Ronald E. Kowalski
Date December 15, 1975

COUNTY OF SANTA CLARA

ATTEST: Donald M. Rains
DONALD M. RAINS
Clerk of the Board of Supervisors

APPROVED FOR FORM:
James M. Thompson
County Clerk

County of Santa Clara
Board of Supervisors
521 Administration Building
70 West Hedding Street
San Jose, California 95110

By James M. Thompson
Chairman of the Board of Supervisors
Date SEP 10 1975

CITY OF PALO ALTO

ATTEST:

Ann O'Leary
City Clerk

250 Hamilton Ave., Palo Alto 94301
Address

By Stanley R. Wilson
Mayor

APPROVED AS TO FORM:

Richard M. [unclear]
City Attorney

Date _____

APPROVED:

[Signature]
City Manager

[Signature]
Director, Library Dept.

[Signature]
City Controller