

Governance

DALNET

GOVERNANCE AND COST ALLOCATION OPTIONS

SUMMARY REPORT

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November 30, 1984

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INTRODUCTION

The Detroit Area Library Network (DALNET) is being formed to enable libraries to provide improved service to their users through shared library automation. In addition to improved service, shared automation is expected to provide a cost effective option to automating individually.

Before Detroit Area Libraries can come together to share the costs and benefits of an automated library system, it is necessary to define:

- (1) how the project will be managed, and,
- (2) how the costs will be divided among the participants.

In order to identify the best governance and cost allocation options, a DALNET Task Force on Governance was established in June, 1984. This Task Force began by gathering data on governance and cost sharing plans from the literature, from other library networks, and from institutions' legal counsel.

The results of their investigation are summarized in this report, which is intended for discussion with Library Directors/Administrators prior to proceeding any further with planning.

GOVERNANCE OPTIONS

Governance must be defined to enable the parent body of each participating DALNET library to contractually obligate its institution to the cooperative automation effort. Consensus about decision making for the DALNET automation project is needed soon.

While reviewing the governance options available to DALNET, the Task Force discovered that the model other groups selected was directly related to the method of funding for the central site and start-up activities.

The two most frequently encountered models are:

Model 1: Service Bureau

When a single institution funds the central site start-up costs for all participants, it becomes a service bureau. It owns the central site hardware and licensed software. The other participants contract with it for services. The institution contracts with vendors and other service bureaus, as needed.

Funding by the single institution can be done by borrowing money, receiving a grant, paying from its own funds, or a combination.

Advisory bodies of the other participants are organized to help manage the project.

Legal documents include contracts and bylaws.

Model 2: Network/Cooperative/or Consortium

When funding for the central site start-up is shared among the participants they form a network, cooperative, or consortium. The members of the network jointly own the central site hardware and licensed software. The members contract with the network for services. The network can contract on behalf of its members, e.g., with vendors or service bureaus.

Funding can be done by borrowing money jointly, receiving a joint grant, having each member contribute a proportionate share, or a combination.

A governing board, responsible to the members, manages the staff who operate the project on a day-to-day basis.

Legal documents depend on the legal structure selected -- either a not-for-profit corporation or a joint venture agreement. The documents include Articles of Incorporation or a Joint Venture Agreement, contracts, and bylaws.

Both of these options are presumably open to DALNET.

MODEL 1: Service Bureau

Wayne State University could fund the central site for all participants and function as the service bureau. In this option, ownership and control of central site hardware, licensed software, and the database would be clearly Wayne State's. It would be making the investment and taking the risk for all. The governance structure would include advisory groups to help manage the project. To form a service bureau, contracts and bylaws could be developed similar to those for Wright State University which is the service bureau for the Cooperative Online Library System in Dayton (See Appendix A).

Advantages to the Service Bureau Model include:

- (1) Liability for the automated system could be reduced for participants;
- (2) Some participants may prefer to minimize their role in governance, especially the smaller libraries with fewer librarians;
- (3) Reimbursement by participants to Wayne State for central site start-up costs could be spread out over time, thus reducing initial capital investment required, while increasing annual operating costs;
- (4) Specialized contracts with Wayne State could be designed to meet the specific needs of each participant;
- (5) A service bureau would require less paperwork to start up than a network that is incorporated, and, therefore, would be faster and simpler to establish;
- (6) Operational decision making may be facilitated by a service bureau model.

Concerns about the Service Bureau Model include:

- (1) Wayne State University would have to be willing and able to fund the central site for all participants;
- (2) There may be a negative impact on DALNET's ability to raise grant funds in support of a service bureau, rather than a cooperative, model;
- (3) Potential participants, especially the larger libraries, may find this model unattractive because their role in governance would be only advisory and they would fear loss of control of their investment;

- (4) Operating within a large organization can require adherence to its institutional policies and procedures which may inhibit efficiency, or which may reflect its needs as opposed to those of the group. Of special concern are a service bureau's needs to earn standard overhead for the host institution or to make a profit on services rendered;
- (5) Participants would not own the data, the central site equipment, and licensed software in which they have invested;
- (6) Some participants may prefer to raise initial capital funds to reduce operating costs in subsequent years;
- (7) An adversarial relationship could develop between the Service Bureau and the participants.

MODEL 2: Network

The Network Model is also an option for DALNET. The Network would become a separate operating entity, either a corporation or a partnership. The type of partnership used is a joint venture, in which the partner relationship is legally defined in a contract. In this model, initial funding for the central site would be shared among the participants. The network would own the central site hardware, licensed software, and joint database. The network could contract, purchase equipment, and defend itself against claims on its assets and resources. The network could operate the automated system itself or via a host institution with which it contracts.

Advantages to the Network Model include:

- (1) The entity established would be able to act on behalf of, and limit the liability of, its members;
- (2) Raising grant funds to support a network may have a better chance for positive results;
- (3) Potential participants, especially the larger libraries, may prefer this model because it maximizes their role in governance;
- (4) Membership options could be created to meet the needs of various participants;
- (5) A network structure promotes an egalitarian approach to issues and facilitates cooperation;
- (6) A network would provide for independent management of the automated system, separate from any one institution, in the best interest of the group as a whole;
- (7) Participants would own the data, central site equipment, and licensed software in which they have invested.

Concerns about the Network Model include:

- (1) Enough participants would have to be willing and able to share in the funding to get it started and continue its support;
- (2) Some participants, especially the smaller libraries, may find it difficult to allocate staff time to participate actively in network governance;
- (3) Operational decision making may be less efficient with a network committee structure.

2.1 Corporation Option

To form a corporation, which is an independent entity created through the statutes of the State of Michigan, DALNET would have to:

- (1) File Articles of Incorporation (one time only);
- (2) Write Bylaws (initial organization and revisions);
- (3) File an annual report;
- (4) Apply to the IRS for tax-exempt status, which takes three to six months.

The governance structure for a corporation would include a governing board that would truly manage the organization, much like the Michigan Library Consortium model. Voting rights would have to be defined. (See Appendix B for sample corporation documents.)

Concerns about the Corporation Option are:

- (1) Incorporation is considered by some to be cumbersome and inconvenient, resulting in delays in establishing the network;
- (2) Since a corporation is an independent entity, some member institutions may fear loss of control of their investment.

2.2 Joint Venture Option

To form a joint venture, DALNET would have to develop a joint venture agreement and write bylaws. Joint Venture Agreement preparation guidelines are remarkably similar to the requirements for corporate bylaws. A Joint Venture is a contractual, not a statutory, entity, and is therefore, free from some state regulations.

DALNET would probably not have to apply for tax exempt status if all the joint venture partners are tax exempt.

A joint venture allows the partners to decide how much authority to give to individuals or groups in its governance structure. (See Appendix C for sample Joint Venture documents.)

An advantage to the Joint Venture option over the Corporation Option is that it provides flexibility of its participants in establishing a governance structure.

Of concern is that a Joint Venture may restrict membership to tax exempt institutions.

NETWORK GOVERNANCE OPTION

All governance options will require bylaws, which include very similar provisions. Bylaws for a Service Bureau Model can be created by modifying those for a Network Model to change the roles of the governing bodies from participatory to advisory. Because the Network Model is the most inclusive one, the Task Force concentrated on outlining the Network Model at this time, with the understanding that it could be modified as needed for the Service Bureau Model.

Detroit Area Library Network (DALNET)

Statement of Purpose

The Detroit Area Library Network (DALNET) exists for the purpose of enabling all types of libraries to improve service to their users through cooperative programs using cost effective shared library automation.

Detroit Area Library Network (DALNET)

Goals Statement

In order to fulfill its mission, DALNET's goals are to:

1. Provide cooperative programs using state-of-the-art technology through which all types of libraries in the Detroit Metropolitan Area can better respond to the needs of their users;
2. Develop and maintain a network serving all types of libraries in the Detroit Metropolitan Area.

Detroit Area Library Network (DALNET)

Sample Objectives for 1984/85

Goal 1: Provide cooperative programs through which all types of libraries in the Detroit Metropolitan Area can better respond to the needs of their users.

Objectives:

- A. Establish a cost effective shared automated system for libraries by using state-of-the-art technology;
- B. Identify available information resources in all DALNET libraries;
- C. Improve access, both bibliographic and physical, to the resources of DALNET libraries;
- D. Facilitate cooperative acquisition, collection development, and preservation programs among DALNET libraries.

Goal 2: Develop and maintain a network serving all types of libraries in the Detroit Metropolitan Area.

Objectives:

- E. Assure a stable financial structure, including support for DALNET programs from external funding agencies;
- F. Provide educational and training support to libraries in the use of DALNET programs;
- G. Publicize the value and promote the use of DALNET programs;
- H. Establish and enforce the standards necessary for cooperative library programs;
- I. Collect, report, and analyze statistical data and management information on the use of DALNET programs;
- J. Administer efficiently all DALNET activities.

Detroit Area Library Network (DALNET)

Sample Tasks for 1984/85

Objective A: Establish a cost effective shared automated system for libraries by using state-of-the-art technology.

Tasks:

- a. Issue a joint RFP in July 1984;
- b. Evaluate vendor responses to the RFP during Fall 1984;
- c. Develop a cost-benefit analysis for the top automated systems;
- d. Recommend the top automated systems for DALNET in December 1984;
- e. Write an automated system plan to seek final commitment from member institutions;
- f. Create a detailed implementation plan for the system selected;
- g. Develop a backup plan for the automated system.

Objective B: Identify available information resources in all DALNET libraries.

Tasks:

- a. Maintain commitment of members to put holdings on OCLC;
- b. Facilitate sharing the retrospective conversion of bibliographic data;
- c. Develop a plan for acquiring and preparing to load currently available machine readable bibliographic records.

Objective C: Increase access, both bibliographic and physical, to the resource of DALNET libraries.

Tasks:

- a. Load DALNET libraries machine readable bibliographic data into a shared data base;
- b. Plan for all types of access to that joint data base;
- c. Review and document reciprocal, and other, borrowing agreements among DALNET libraries;
- d. Review and document delivery systems between and among DALNET libraries.

Objective D: Facilitate cooperative acquisition, collection development, and preservation programs among DALNET libraries.

Tasks:

- a. Identify jointly held materials via the shared data base;
- b. Consider a "Library of Record" for journals within DALNET.

Objective E: Assure a stable financial structure, including support for DALNET programs from external funding agencies.

Tasks:

- a. Create a plan to distribute start-up costs among initial participants in a shared automated system;
- b. Create a plan to distribute on-going costs of a shared automated system;
- c. Develop at least one proposal to seek the financial support of an outside funding agency.

Objective F: Provide education and training support to libraries in the use of DALNET programs.

Tasks:

- a. Develop a staff training program for initial DALNET libraries;
- b. Develop basic user aids for access to the Online Public Catalog.

Objective G: Publicize the value and promote the use of DALNET programs.

Tasks:

- a. Issue appropriate press releases at milestone events;
- b. Keep Detroit area library groups informed of the progress of DALNET, including DALN ROC, SEMLOL;
- c. Create promotional literature to seek additional participants in DALNET;
- d. Create a logo or other identifier for DALNET;
- e. Write one article for publication about DALNET.

Objective H: Establish and enforce the standards necessary to cooperative library programs.

Tasks:

- a. Develop standards for records included in the shared bibliographic data base;
- b. Develop standards for borrower identification cards used within DALNET;
- c. Develop standards for authority records included in the automated system;
- d. Develop standards for other records, including holdings and borrowers, needed to automate;
- e. Recommend a mechanism to enforce the accepted standards.

Objective I: Collect and report statistical data on the use of DALNET programs.

Tasks:

- a. Recommend needed reports for DALNET programs;
- b. Establish a reporting schedule.

Objective J: Administer efficiently all DALNET activities.

Tasks:

- a. Develop and approve a governance plan for DALNET.
- b. Create a detailed plan to staff and operate the DALNET programs.

Detroit Area Library Network (DALNET)

STRUCTURE AND ORGANIZATION

Outline

1. Governance of the network will be vested in a Board of Trustees. Each full member will designate two Trustees. The Board will be responsible for the property, business, and affairs of the organization. The Trustees will establish broad policies, approve program plans, elect the officers of the organization, approve new members, and elect representatives to the Executive Committee.
2. Each full member will have votes proportional to the percentage of their cost for the central site. Each full member will determine how its votes are to be cast by its trustees.
3. The Board of Trustees will meet at least twice a year.
4. The Board of Trustees will delegate to the Executive Committee responsibility for exercising the Board's authority in the operational management of the organization. All decisions of the Executive Committee will be subject to review by the Board of Trustees.

The Executive Committee will be composed of the President and Vice-President/President-Elect of the Network (selected from the Board of Trustees), one representative from the Detroit Public Library, the University of Detroit, and Wayne State University (if each is participating), and two representatives elected by the Trustees of the other member libraries.

- Each member of the Executive Committee will have one vote. In the case that a permanent member's representative is elected an officer, their library will not have another representative on the Executive Committee.
5. Representatives of DALNET full members and affiliate/associate members will provide advice regarding system operations to the Executive Committee and the Network Staff via standing committees of the users for Data Base Standards and each functional subsystem.

DALNET MEMBERSHIP OUTLINE

I. Who will be a member?

- A. A library system or autonomous library will be a member. Each institution will decide how many separate memberships it requires for its library systems and autonomous libraries.
- B. Libraries in "for-profit" institutions will be able to be members.
- C. Founding members will be given four months to commit to participation. They would be required to begin participation within the first year and a half of operation.
- D. A suggested geographic boundary to be established for membership is the Detroit Metropolitan Area.
- E. Individuals, libraries, or institutions may be subscribers.
- F. Member libraries must abide by Equal Employment Opportunity requirements.

II. Types of members.

- A. Members will be defined as libraries or library systems that agree to enter their bibliographic data into the DALNET database and maintain its accuracy according to established DALNET standards.
- B. Full members.
 - 1. Rights/Privileges
 - a. Will have a role in the governance of DALNET.
 - b. May receive the full range of DALNET services.
 - c. May participate on DALNET advisory committees.
 - 2. Responsibilities
 - a. Must participate in DALNET governance.
 - b. Must uphold DALNET standards, as applicable.
 - c. Must participate in DALNET's automated bibliographic database and circulation systems, as a minimum.
 - d. Must commit to participation for a minimum of five years.

3. Costs.

a. Founding members will be responsible for:

1. Proportionate fees to cover central site costs, both start-up and on-going.
2. Local site expenses.

b. Later full members will be responsible for a fee to cover DALNET's central site start-up costs.

4. Full member's liability.

- a. Will be liable for expenses to DALNET from downtime or damage caused by negligence of their authorized agents.
- b. Will be liable for their payments to DALNET.

C. Affiliate members.

1. Rights/Privileges

- a. May receive full range of DALNET services.
- b. May participate on DALNET Advisory Committees, as appropriate.

2. Responsibilities

- a. Must participate in DALNET's automated bibliographic database, as a minimum.
- b. Must uphold DALNET standards, as applicable.
- c. Must pay start-up and on-going costs, as specified in a payment schedule.

3. Costs

- a. Affiliate members will pay a DALNET "surcharge," e.g., a percentage, above costs.
- b. Affiliate members will be responsible for:

1. Proportionate fees to cover central site costs, both start-up and on-going.
2. Local site expenses.

4. Affiliate member's liability.

- a. Will be liable for their payments to DALNET.
- b. Will be liable for expenses to DALNET from downtime or damage caused by negligence of their authorized agents.

III. Subscribers.

- A. Subscribers will be defined as libraries, institutions, or individuals, with special access to search the DALNET Online Catalog.
- B. Rights/Privileges.
 - 1. May search public data in the DALNET Online Catalog via dial-up, or dedicated, line.
 - 2. May enter messages on the DALNET system as specified by DALNET.
- C. Responsibilities.
 - 1. Must uphold DALNET standards, as applicable.
 - 2. Must pay for use as specified in a payment schedule.
- D. Costs.

Subscribers will pay:

 - 1. A start-up fee.
 - 2. Time and transaction fees higher than those of members.

IV. Code of Responsible Use.

- A. All members and subscribers will agree to abide by this code.
- B. The code will include DALNET standards for loading data into and maintaining the integrity of the DALNET database(s).
- C. The code will address the re-sale of data from the DALNET database(s).
- D. The code will address the downloading of data from the DALNET database(s).
- E. The code will address the use of data to create independent products.
- F. The code will address the subsequent use of records within the DALNET database(s).
- G. DALNET participation should not interfere with member's contracts with processing centers, bibliographic utilities, and other networks.

V. Ownership.

- A. Members and subscribers will own the local site equipment and supplies they have purchased.
- B. DALNET will own:
 - 1. Central site equipment and supplies purchased jointly.
 - 2. Software purchased jointly.
 - 3. The records and data in the DALNET database.

VI. Initiating and Terminating Membership.

A. Initiating membership

- 1. A library will apply to the Board of Trustees for membership, indicating desired full or affiliate status.
- 2. The DALNET Executive Committee will recommend membership to the Board of Trustees.
- 3. The Board of Trustees will vote on new members taking into consideration:
 - a. the ability of the automated system to accommodate the new member at the time of joining, and
 - b. the impact on telecommunications and other system costs.

B. Terminating membership.

- 1. The DALNET Executive Committee will recommend termination to the Board of Trustees.
- 2. The Board of Trustees will vote on terminations.
- 3. Membership will terminate with the beginning of DALNET's next fiscal year.
- 4. Members are entitled to receive a copy of their data and to retain local site equipment they have purchased.
- 5. Members will pay the costs of obtaining a copy of their data.
- 6. Members will forfeit their share of the investment in the central site at withdrawal.
- 7. Reinstated members will pay reduced start-up fees, as applicable.

C. Voluntary termination.

- 1. A full member will be required to give one DALNET fiscal year's notice with reasons and may submit termination notice no earlier than the end of their fourth year of participation.
- 2. Affiliate members should be required to give 6 months notice prior to the beginning of DALNET's fiscal year.

D. Involuntary termination.

1. Involuntary termination could be required for:
 - a. Non-payment of DALNET charges.
 - b. Non-compliance with DALNET standards.
2. There will be a process to solve non-payment or non-compliance problems prior to recommending termination.
3. There will be an arbitration process so members can appeal an involuntary termination.
4. Financial penalties incurred for involuntary termination will not exceed DALNET's obligations on behalf of that member's activities.
5. Reinstated members may be required to fulfill a probationary period before being fully reinstated.

E. Subscribers

1. The DALNET Executive Committee will accept subscribers based on an approved growth plan.
2. Subscriptions will be automatically renewed each fiscal year unless DALNET is notified two months in advance of nonrenewal.
3. Subscriptions will be involuntarily terminated for:
 - a. Non-payment.
 - b. Non-compliance with DALNET standards.
4. A non-payment and non-compliance resolution process will be designed to avoid termination.

DISSOLUTION OF DALNET

In the event that DALNET dissolved, members would be entitled to a copy of their data and to their proportionate share of any remaining liabilities and assets.

COST ALLOCATION GUIDELINES

1. DALNET will recover its costs, e.g., staff, space, depreciation, supplies, and contingencies, and will maintain a not-for-profit status.
2. Non-founding members will pay a one time fee for a proportional share of the initial investment to begin DALNET.
3. Money earned above operating expenses will be designated for planned budgetary items.
4. Members will be responsible for their own start-up and on-going local site expenses, including, but not limited to:
 - (a) Site preparation.
 - (b) Supplies.
 - (c) Equipment, e.g., terminals, barcode readers, printers, modems, multiplexors or other communications equipment.
 - (d) Maintenance and installation of local equipment.
 - (e) Installation of local telecommunication lines.
 - (f) Bibliographic record tape cleanup prior to loading.
 - (g) Putting bar codes on materials.
 - (h) Registering patrons.
 - (i) Putting borrower, item, and other required data into standard machine-readable form.
 - (j) Customized programming needed to load data or to connect to local data bases.
5. Central site costs, both start-up and on-going, will be shared proportionately among members, including, but not limited to, staff, space, office equipment, central site preparation, hardware, software, maintenance, supplies, and tape loading.
6. Start-up costs for the central site will be those incurred for the initial system and for DALNET's first year of operation.
7. Start-up costs will be divided among founding members proportionately by the average percentage of each member's estimated first two years.
 - (a) items to be input in the bibliographic data base;
 - (b) annual DALNET circulation transactions;
 - (c) number of terminals to be installed.
8. Beginning with the second year, on-going costs for the central site will be divided proportionately by the average percentage of each member's actual or estimated:
 - (a) items in the bibliographic data base;
 - (b) system activity;
 - (c) number of terminals.

9. Libraries will pay for their offline products produced centrally according to a schedule of fees, e.g., overdue notices and postage.
10. On-going telecommunications line charges will be divided equally by terminal.
11. Each library is responsible for its own retrospective conversion costs.
12. DALNET OCLC contract obligations for reuse of records in the DALNET database will be met.
13. In the event of termination of membership, libraries will pay the costs for withdrawal of their data from the database.
14. Reinstated members will pay reduced start-up fees, as applicable.
15. Subscribers, defined as those who use DALNET data but do not contribute their data to DALNET, will pay a start-up fee to cover training, documentation, and initial administrative costs, and time and transactions fees higher than those of members.
16. Subscribers will be responsible for their own start-up and on-going local site expenses, including, but not limited to:
 - (a) Site preparation.
 - (b) Supplies.
 - (c) Equipment, e.g., terminals, printers, and modems.
 - (d) Maintenance and installation of local equipment.
 - (e) Installation and on-going charges for telecommunications lines.

Proportionate Share*

<u>Library</u>	<u>No. of Titles</u>	<u>%</u>	<u>No. of Terminals</u>	<u>%</u>	<u>No. of Circs</u>	<u>%</u>	<u>Aver %</u>
WSUL	270,080	45%	59	24%	279,986	13%	27%
DPL	133,000	22%	83	34%	1,442,500	68%	41%
U of D	134,000	22%	50	20%	31,594	2%	15%
WCCC	24,000	4%	26	11%	128,000	6%	7%
Botsford	1,400	1%	3	1%	27,808	1%	1%
Children's	1,833	1%	3	1%	5,019	1%	1%
Harper	6,773	1%	3	1%	76,323	4%	2%
Henry Ford	10,456	2%	8	3%	13,000	1%	2%
Mt. Carmel	7,000?	1%	3	1%	7,000	1%	1%
Sinai	7,542	1%	3	1%	22,316	1%	1%
William Beaumont	<u>5,820</u>	<u>1%</u>	<u>4</u>	<u>2%</u>	<u>41,291</u>	<u>2%</u>	<u>2%</u>
Totals	601,904	101%	245	99%	2,074,837	100%	100%

*Data to be revised; based on preliminary figures.

CONCLUSION

The DALNET Task Force on Governance recommends that DALNET adopt a network structure, thereby creating a separate entity capable of contracting for service, hiring staff, owning equipment, and selling services.

The network structure can assure the most success with raising grant funds. It can be flexible to meet the needs of various membership options, including the affiliate members who prefer to only buy the network's services. It provides independent management separate from any one institution, thereby facilitating cooperation.

Either a Joint Venture Agreement or a Not-for-Profit Corporation could be established. Of these two options, the Joint Venture Agreement seems to require the least paperwork and may provide the most flexibility in governance.

Care would need to be taken in designing the network governance structure to maximize the efficiency of operational decision making.

Appendix A

**WRIGHT
STATE**

Wright State University
Dayton, Ohio 45435

RECEIVED

SEP 7 1984

University Library
513/873-2380

**WAYNE STATE UNIVERSITY
LIBRARY OFFICE**

September 4, 1984

Ms. Louise Bugg
Wayne State University
Purdy Library
Detroit, MI 48202

Louise:

I have enclosed a copy of the (COLS) Cooperative Online Library System Membership Agreement. The Bylaws are exhibit "C". I have also enclosed a copy of a page which addresses the question of apportioning costs among the members.

You will note that although we intend to operate COLS as a cooperative, in fact Wright State, who will be purchasing the system, has a number of rights reserved to itself. In practice, I hope there will be no noticable difference, but it does give one a certain freedom to manage the system.

Yours,

Ronald J. Nimmer

P.S. The other consortium is: Harrington Library Consortium
George Huffman (contact)
(806) 376-5111

July 11, 1984

Mr. John Wallach, Director
Dayton & Montgomery County Public Library
215 East Third Street
Dayton, OH 45402

Dear Mr. Wallach:

- 1) COLS Agreement: enclosed.
- 2) Determination of service fee:

The service fee charged each institution is composed of two portions:

- a) Capitalization (i.e., principle and interest on purchase price of central site equipment, site preparation and communication line installation costs) is estimated for the "term" of service. Each institution's share of those costs are determined by adding that institution's percentage of system terminals to that institution's percentage of titles in the database and the sum is divided by two(2). The resulting percentage is then multiplied by the capitalization costs for the term.

Example: Institution A has 20 terminals of 100 installed in the system and holds 10,000 titles of the 100,000 titles in the database, and the principle and interest for the term is \$200,000. Institution A's portion of the capitalization costs are:

$$(20\% + 10\%)/2 \times \$200,000 \text{ or } \$30,000$$

- b) Operating (personnel, utilities, supplies, etc.) costs are divided equally among member institutions.

Example: Institution A is one of 10 members in COLS, and operating costs for the term are projected at \$150,000. Institution A's portion of the operating cost is then:

$$\$150,000/10 \text{ or } \$15,000$$

The total service fee for Institution A has thus been determined to be \$30,000 + \$15,000 or \$45,000.

Call me if the above needs clarification.

AGREEMENT

WHEREAS, Wright State University and several other local universities and medical facilities have proposed to undertake a Cooperative Online Library System (COLS), which will support a multi-institutional network providing for the display of both local and systemwide information, and

WHEREAS, Wright State University has purchased or will be purchasing certain equipment for the implementation of a COLS (described hereafter in Exhibit "A", attached hereto and incorporated herein by reference), and

WHEREAS, _____ is desirous of participation in this COLS;

This agreement is entered into this ____ day of _____, 198__, between Wright State University, Dayton, Ohio 45435 (hereinafter the University) and _____ (hereinafter the User).

1. "Central site equipment" shall refer to equipment (exclusive of terminals, printers, and associated telecommunication equipment, i.e. the University's local site equipment) purchased and owned by the University for the operation of COLS. The central site equipment includes all equipment listed in Exhibit "A" attached hereto and incorporated herein by reference.

2. Database refers to any and all data or information entered into the COLS by any User. The User hereby agrees to enter the necessary Bibliographic, Library Patron, and other information requested for inclusion in the database. The University will make every reasonable effort to maintain the security of the database and prevent unauthorized access to the information therein.

3. "Equipment" shall refer to computer hardware and other manufactured items used in the operation of COLS.

4. "Local site equipment" shall refer to equipment owned and purchased by the User. Such equipment shall include but is not limited to terminals, printers, multiplexers, modems, and barcode readers. The User shall be responsible for the purchase and all costs associated with the local site equipment, including maintenance. The User is also responsible for local site preparation. Such site and equipment is the sole property of the User.

5. The "online system", consisting of supplier provided software and hardware and a generated database, provides online computer assisted library services to the User. The User agrees to use the library services of COLS and to maintain the currency of its information in the database.

6. The service cost for the User's participation in COLS is outlined and described in Exhibit "B" attached hereto and made part hereof by reference. Any User joining COLS during the specific periods described in Exhibit "B" shall be considered members for the entirety of that specific period. All members agree to remain members, and to meet the obligations required under Exhibit "B" for a minimum period of five (5) years from the date of their membership.

7. Each User shall have access to the entire database and to all subsystems of COLS during the scheduled hours of operation designated by the University at the beginning of each contract year. However, access to certain data and subsystems may be restricted to individuals at each institution who have been authorized for that access. This restriction is necessary to assist in maintaining privacy of information relating to individuals and to assist in maintaining the security of the system.

8. The data entered by or for each User is the property of that User, and upon termination of this agreement, the User may request the output of that data to magnetic tape in standard Machine Readable Cataloging format.

9. All central site equipment and system software licenses will be owned by the University, and it is hereby understood that the User has no ownership interest in either the central site

equipment or the system software licenses.

10. The term of this agreement shall be five (5) years. At the end of the initial five (5) year term of this contract, the contract will be automatically renewed for an additional one (1) year term unless written notice of termination is provided by the terminating party at least sixty (60) days before the end of the current term. Thereafter, annual renewals for one year terms will continue absent the notice of termination at least sixty (60) days prior to the end of each yearly term. Such notice shall be effective upon receipt by the other party.

11. The University may, by written notice given on or before October 1, 1985, and each October 1, thereafter, adjust the costs of the User's participation in COLS to be effective January 1 of the following calendar year in a manner sufficient to cover the costs of operation and/or to reflect changes in the extent of the User's participation in COLS.

12. (a) Down time has occurred whenever the services provided by COLS are not available to the User during the scheduled hours of operations as published periodically by the University. The University may depart from the published schedule by written notice to the User at least two weeks in advance of the change if necessary to maintain the efficiency for COLS.

(b) The University shall make every effort, in good faith, to limit the time the system is down or not operating efficiently.

(c) The University is only responsible for down time in the system or loss of information from the system caused by the negligence of its authorized agents. Any down time caused by failure in equipment, whether central site equipment or local site equipment, unless caused by the negligence of its authorized agent is not the responsibility of the University. The authorized agents of the University are those University employees who are budgeted in full or in part against the account established for COLS.

13. The University is not responsible for any breakdown in the system or loss of information by the system which is caused by an act of God.

14. Any liability assessed to the University pursuant to Paragraph 12(c) of this Agreement for down time is limited as follows: The total costs of the User as described in Exhibit "B" hereto shall be divided by the total number of hours which the system is in scheduled operation in the course of each year of the contract. For each hour of down time, which is caused in accordance with paragraph 12 of this Agreement, the above base cost per hour will be credited to the User. No further liability will be assessed to the University for any down time of the computer.

The University's sole liability for any costs to the User incurred as the result of loss or damage to the information in the database resulting from the University's negligence or that of its authorized agents shall be limited to the loading of the most recent copy of the database. The University will not be liable in any event for any damages resulting from the loss of data, loss of profits, use of products, or for any incidental or consequential damages, even if advised of the possibility of such damage. This limitation of liability will apply regardless of the form of action, whether in contract or tort. Any action against the University must be brought within eighteen (18) months after the cause of action accrues.

15. An advisory organization shall be created to advise the University on the operation of COLS and promote and develop cooperative library service. The by-laws of this organization are included in Exhibit "C" hereto, which is incorporated by reference and made part hereof. The existence of this organization in no way affects the rights or obligations of either of the parties under this agreement, nor does it affect any ownership rights described hereinbefore. If any provision of Exhibit "C" is found to be inconsistent with any other provision of this agreement, the other provision of this agreement shall prevail over the provision of Exhibit "C".

16. The University has the right to:

A) Add to the number of Users participating in COLS at any time it deems appropriate to do so;

B) Limit the structure and size of the data each User is entitled to enter under the contract;

C) Inspect or cause to be inspected, and repair or cause to be repaired any "local site equipment" causing or suspected of causing down time in COLS at the cost of the User, and

D) To exercise all functions consistent with management of COLS and the University's duties and obligations under this agreement.

17. The User understands that the operating system and other software listed in Exhibit "A" hereof is licensed to the University by Data Research Associates, under certain licensing agreements in a contract between the University and Data Research Associates. The University shall provide the User with a copy of the contract(s) between the University and Data Research Associates. The User agrees to abide by all restrictions, limitations, and prohibitions of such licensing agreements within said contract, and to indemnify and hold harmless the University for any and all damages, liquidated or otherwise, due Data Research Associates resulting from a breach of these licensing agreements by the User. The User further agrees to pay all costs incident to such a breach, including, but not limited to reasonable attorneys' fees. The User shall not duplicate or copy any software documentation provided for COLS by Data Research Associated without the express written consent of Data Research Associates and the University.

18. The User shall not solicit for employment or hire any Data Research Associates employee engaged in fulfilling the terms of the contract between Data Research Associates and the University without the prior written consent of Data Research Associates and the University. This provision shall remain in effect for a period of twenty-four (24) months after the User terminates its membership in COLS. However, if Data Research Associates ceases to do business, said prohibition is no longer effective. The User agrees to indemnify and hold the University harmless for any and all damages, liquidated or otherwise, due Data Research Associates for the breach of this provision by the User. The User further agrees to pay all costs incident to such breach, including, but not limited to reasonable attorneys' fees.

19. The User agrees that the University may include in the User fee any expenses arising from arbitration regarding the terms of the agreement between Data Research Associates and the University. The User further agrees to indemnify, reimburse, hold harmless and defend the University from any loss, cost, liability or other expense, including, but not limited to reasonable attorneys' fees incident to an action of the User, which constitutes a breach of the agreement between Data Research Associates and the University.

20. All notices to be given under this contract shall be in writing and shall be sent by certified mail to the last known address of the party to receive the notice.

21. This agreement shall be construed under and in accordance with the laws of the State of Ohio.

22. The User cannot assign, lease or sell any interests, rights, obligations, or responsibilities granted him in this contract or add to or remove any local site equipment without the express written consent of the University.

23. This written agreement constitutes the sole and entire agreement between the parties hereto and supercedes any prior understandings or written or oral agreements between the parties respecting the within subject matter and shall not be amended unless such amendment is in writing.

24. This agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this agreement.

25. In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect such invalidity, illegality, or unenforceability shall not affect the other provisions thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

26. Both parties hereby recognize and agree that the provisions of this contract are conditioned upon the purchase of the necessary "central site equipment", including but not limited to hardware and software, by the University and the participation of five (5) other Users in COLS.

Executed on the day and year first written above.

WRIGHT STATE UNIVERSITY

BY: _____

USER

BY: _____

EXHIBIT "B"

USER FEE

The University, in consenting to acquire and operate an online system seeks no gain and shall absorb no loss. Therefore, the User shall understand that the User fee cited in this exhibit shall be adjusted at the end of each year to reflect actual costs. Further, as noted in paragraph 11 of the agreement, the University may adjust the User fee to reflect any change in cost or in the User's use of the system.

The University shall maintain a record of all costs attributed to COLS and shall provide summary thereof to the User upon request.

This agreement shall begin with the service term of Sept. 1, 1984, to December 30, 1985, or January 1, 1985 to December 30, 1985, or January 1 of each calendar year thereafter. Each service term beginning with January 1, 1985, or any January 1 thereafter shall be for one calendar year.

For the first (initial) service term of this agreement, a surcharge of 33 % of the User fee shall be added to the User fee for that term.

The User fee for _____
_____ is \$ _____ for each service term.

The User shall forward to the University the prorated monthly payment of the User fee on or before the 15th of each month of the service term. The University may charge interest at the rate of 14% per annum for any payments not made within five (5) days of the due date.

EXHIBIT "C"
COOPERATIVE ONLINE LIBRARY SYSTEM
BY-LAWS

ARTICLE I - NAME

The name of this organization shall be the Cooperative Online Library System (COLS).

ARTICLE II - PURPOSE AND OBJECTIVES

This organization shall advise Wright State University on the operation of COLS and promote and develop cooperative library service.

ARTICLE III - MEMBERSHIP

Membership shall include those libraries (hereinafter referred to as member libraries) who have signed an agreement with Wright State University for certain online library services.

ARTICLE IV - OFFICERS

Section 1 - Composition. The elected officers of the organization shall be a Coordinator, an Assistant Coordinator who shall be Coordinator-Elect, and a Secretary. Their terms of office shall be for one calendar year commencing January first.

Section 2 - Vacancies in Office.

A. Vacancies in office of Assistant Coordinator shall be filled with an appointment made by the Coordinator with majority approval of the board. The appointee shall be from a COLS library.

B. Vacancies in the office of Secretary shall be filled with an appointment made by the Coordinator. The appointee shall be from a COLS library.

ARTICLE V - DUTIES OF OFFICERS

Section 1 - Coordinator. The Coordinator shall be the representative of the organization in the activities of COLS. The Coordinator shall preside at all meetings of the membership and the advisory board and shall appoint all standing and ad hoc committees.

Section 2 - Assistant Coordinator. The Assistant Coordinator shall act in the absence of the Coordinator.

Section 3 - Secretary. The Secretary shall be responsible for all minutes and records of the advisory board and of membership meetings, and be responsible for other duties as assigned. Copies of all minutes shall be sent to all member libraries within 2 weeks of each meeting.

ARTICLE VI - ADVISORY BOARD

Section 1 - Authority. The policies of this organization shall be determined by its advisory board.

Section 2 - Composition. The advisory board shall consist of a representative from each member library. The term of office for the representatives shall be for one calendar year commencing January first.

Section 3 - Meetings. Regular meetings of the advisory board shall be held in even-numbered months. The minimum number of meetings per year shall be four.

Section 4 - Special Meetings. Meetings of the advisory board shall be called by the Coordinator or at the request of four members of the advisory board. Written notice of the meeting and the agenda shall be mailed to advisory board members not less than ten days prior to the meeting date.

Section 5 - Quorum. A simple majority of the advisory board shall constitute a quorum.

ARTICLE VIII - NOMINATIONS AND ELECTIONS

Section 1 - Nominating Committee. The Nominating Committee shall consist of the immediate past Coordinator and two members appointed by the advisory board from member libraries. The Nominating Committee shall select its own chair.

Section 2 - Nominations. Before November first of each year, the Nominating Committee shall present to the Coordinator the names of two candidates who are member library representatives for each elective office and position. The Chair of the committee shall obtain from each candidate written consent before placing the name on the ballot. Nominations from the floor shall be permitted before the election at the December meeting.

Section 3 - Elections. Elections shall be conducted at the advisory board meeting in December each year.

ARTICLE VIII - COMMITTEES

Section 1 - Standing and ad hoc committees may be appointed by the Coordinator with the consent of the advisory board. Members of the committees shall be from current member libraries. Institutions that may be potential organization members may send representatives to committee meetings with the consent of the committee chair.

Section 2 - There shall be a standing committee to advise COLS on the security of the system and on the integrity of the database. There shall be at least three members on this committee. It shall meet at least four times per year.

ARTICLE IX - PARLIAMENTARY AUTHORITY

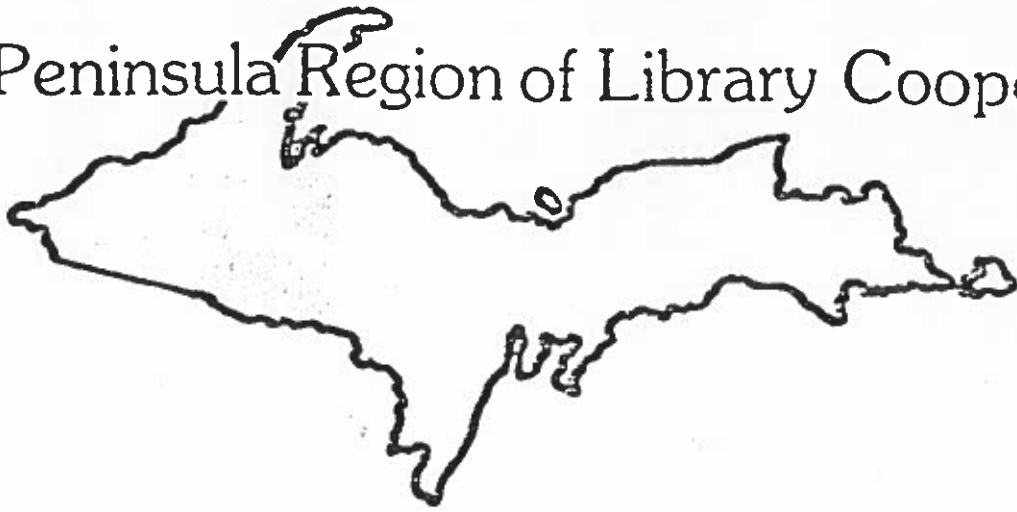
Roberts Rules of Order, revised, shall be followed.

ARTICLE X - AMENDMENTS

These by-laws may be amended with the consent of the University by two-thirds vote of member libraries present, provided that notice of the proposed changes has been given to the membership at least two weeks prior to the meeting. Fifty percent of the member libraries shall constitute a quorum. Each member library shall have one vote.

Appendix B

Upper Peninsula Region of Library Cooperation



BY-LAWS

ARTICLE I -- Name and Purpose

Section 1.01. Name. The name of the corporation is the Upper Peninsula Region of Library Cooperation (hereinafter referred to as the "Region"), incorporated under the provisions of Act 327, Public Acts of 1931, as, and Act 284, Public Acts of 1972, as amended.

Section 1.02. Purposes. As set forth in its Articles, the Region is formed exclusively for the purposes of:

(a) facilitating the sharing of information resources among the libraries of Michigan's Upper Peninsula; encouraging the libraries of Michigan's Upper Peninsula to institute such cost-effective practices and procedures which may be made possible through Upper Peninsula wide interlibrary cooperation; and enabling the libraries of Michigan's Upper Peninsula to link up and interact with other regional and national electronic bibliographical communication systems.

ARTICLE II -- Participants

Section 2.01. Members. The membership of the Region shall be composed exclusively of Michigan governmental subdivisions or agencies and Michigan non-governmental corporations, partnerships, associations, and trusts located in Michigan's Upper Peninsula. The number of members shall be such number not less than three, as the Board of Trustees shall from time to time determine. It is intended that the members shall be interested in promoting and aiding the purposes of the Region.

Section 2.02. Affiliates. Libraries and institutions not meeting qualifications for membership status under the Articles of Incorporation shall be considered for affiliate status. Affiliates shall assume all the duties, obligations, and privileges of Members in promoting the goals and objectives of the Region.

Section 2.03. Election of Members and Affiliates. The Members and Affiliates shall be elected by the affirmative vote of a majority of Trustees by mail ballot and confirmed at any annual or special meeting in which a quorum is present. The

incorporation named in the Articles of Incorporation shall be the initial members of the Region but shall automatically cease to be such upon the election by the Trustees of three or more Members or Affiliates which qualify under Section 2.01 and 2.02.

Section 2.04. Rights and Interests. Members and Affiliates shall be entitled to receive annual reports and other communications, publications, and services from the Region deemed appropriate by the Trustees, and to receive notice of, to attend, and to vote all meetings of the Trustees. Representatives of the Members and Affiliates may participate on any standing or temporary committee appointed by the Trustees.

Section 2.05. Dues, Assessments, and Contributions. The Board of Trustees may from time to time levy dues or assessments, or both, upon the Members and Affiliates, or may require the making of contributions by Members or Affiliates to the Region as a condition to becoming or (on a periodic basis) as a condition to continuing as a Member or Affiliate, but no Member or Affiliate shall be legally obligated to pay dues or assessments or to make contributions until such obligation has been approved by a duly authorized officer or agent of such Member or Affiliate. Dues, assessments, or contributions may be imposed in different amounts or proportions, or upon a different basis, on the Members or Affiliates. The method of collection may be fixed by the Board of Trustees, which may in case of non-payment provide for the denial of voting rights, the cancellation of membership or affiliate status, and/or the termination of services, upon thirty days written notice, and for reinstatement thereof upon proper circumstances.

Section 2.06. Requirement of Approval of Members and Affiliates. The Region shall not liquidate, dissolve, sell all or substantially all of its assets, merge, consolidate, or amend its Articles without the approval of a majority of the Members and Affiliates. In the event of the liquidation or dissolution of the corporation, all assets, real and personal, shall be distributed to such organizations as are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code or the corresponding provisions of a future United States Internal Revenue Law.

Section 2.07. Termination.

(a) Any Member or Affiliate may resign its membership or affiliate status as of the end of a fiscal year (see section 7.03) of the Region but not less than six months prior by written notice of resignation filed with the Chairperson of the Board of Trustees of the Region,

(b) except as otherwise permitted by the Board of Trustees, in special cases, the resignation or termination of any Member or Affiliate for any reason shall not relieve the Member or Affiliate from the obligation to discharge all obligations due and payable by it to the Region, including obligations undertaken by the Member or Affiliate for the period immediately preceding the effective date of the termination of its status.

ARTICLE III -- Board of Trustees

Section 3.01. Number, Selection, and Term of Office.

(a) Each Member and Affiliate shall be entitled to appoint two persons to serve as Trustees of the Region, one of whom shall be designated as the Librarian Trustee. The Trustees shall serve as the Board of Trustees of the Region (hereinafter referred to as "Trustees"). The number of Trustees which shall constitute the full Board of Trustees at any time shall be equal to the number of persons at the time duly appointed to serve as Trustees as hereinafter provided.

(b) Each Member and Affiliate may appoint two alternates. In the absence of a Trustee, an alternate may represent the Member or Affiliate.

(c) A full Board of Trustees shall be appointed annually by the Members and Affiliates by filing with the Chairperson a written instrument naming the person or persons so appointed. Trustees shall hold office until the annual meeting next following their appointment and until successors, if any, are appointed.

(d) Effective on the termination for any reason in the Region of any Member or Affiliate, any person serving as a Trustee from that Member or Affiliate shall cease to be a Trustee of the Region and the number of persons constituting the full Board of Trustees shall be reduced accordingly.

Section 3.02. Authority. The property, business, and affairs of the Region shall be managed by the Board of Trustees. The authority of the Trustees shall include the power to authorize the Region to borrow money, to acquire grants or gifts, to enter into contracts, and to purchase, sell, lease, mortgage and otherwise acquire or dispose of real estate.

Section 3.03. Annual Meeting. An annual meeting of the Trustees shall be held between 1 August and 30 September of each year on such a day and at such a time and place as shall be designated by the Board of Trustees.

Section 3.04. Special Meetings. Special meetings of the Trustees may be called at any time by the Chairperson of the Region, its Executive Council, or by the Board of Trustees of the Region.

Section 3.05. Notice of Meetings. Written notice of each meeting of the Trustees shall be given to each Member and Affiliate two weeks prior to the meeting. Such notice shall specify the place, day, and hour of the meeting and the general nature of the business to be transacted.

Section 3.06. Consent. Any action which could be taken at a meeting of the Trustees may be taken without a meeting if a consent or consents in writing setting forth the action to be taken shall be signed by a majority of the Trustees, and filed with the Chairperson, and confirmed at the next annual or special meeting of the Board of Trustees.

Section 3.07. Quorum. At any meeting of the Trustees, the presence of a majority of Member and Affiliate institutions shall be necessary and sufficient to constitute a quorum for the transaction of business. Each Member and Affiliate

shall be entitled to two votes. At every duly called and notice meeting in which a quorum is present, acts adopted by the affirmative vote of a majority of Trustees shall be valid, except as otherwise provided herein or by law.

Section 3.08. Parliamentary Authority.

(a) Roberts Rules of Order, Revised, shall be the authority for conducting all meetings of the Trustees.

(b) The Vice-Chairperson shall normally serve as parliamentarian of all meetings of the Trustees. In the absence of or inability of the Vice-Chairperson to function as parliamentarian, such duties shall fall to an officer or Executive Council Member, as designated by the Chairperson of the Board of Trustees.

Section 3.09. Executive Council.

(a) The Executive Council of the Region shall consist of the Officers of the Region, one Trustee each appointed by the Lake Superior State College, Michigan Technological University, Northern Michigan University, and Peter White Library; one Trustee each appointed by Hiawatha Land Co-operative, Mid-Peninsula Co-operative, and Superiorland Co-operative; and one Trustee each appointed by REMC 1, REMC 21, and REMC 22, if indeed these institutions have joined the Region. Further, there shall be one Trustee elected by the community college trustees from amongst themselves, one Trustee to be elected by the special library trustees from amongst themselves, and no more than six Trustees to be elected at large from the other Trustees to serve staggered two year terms. The State Library Services will be represented by an ex-officio (no vote) member. The Executive Council shall have and exercise the full authority and power of the Trustees in the management of the property, business, and affairs of the Region, except that the Executive Council may not exercise the authority given to the Trustees in Sections 2.01, 2.02, 2.03, 3.10, 4.01, 7.03, and 8.01 of the Bylaws.

(b) The Chairperson of the Board of Trustees shall be presiding officer at meetings of the Executive Council.

(c) Members of the Executive Council shall hold office for the term for which they have been appointed or elected to the position they hold on the Board of Trustees of the Region, subject to subsection (d) of this Section 3.09.

(d) If a member of the Executive Council shall for any reason cease to be an officer or Trustee of the Region the individual shall automatically cease to be a member of the Executive Council without the necessity of any action by the Trustees. Vacancies in elected seats on the Executive Council shall be filled by the election of a new trustee from amongst the designated electorate and the result reported by written instrument and filed with the Chairman and Secretary of the Board of Trustees.

(e) At any meeting of the Executive Council, the presence of a majority of Executive Council members shall be necessary and sufficient to constitute a quorum. At every duly called and noticed meeting in which a quorum is present, the affirmative vote of a majority of Executive Council members present shall be necessary for the adoption of any resolution or the taking of any action. The Executive Council shall adopt its own rules of procedure as to call and notice of

meetings and the like, and shall cause regular minutes of its proceedings to be kept. All actions of the Council shall be reported to the Trustees.

(f) In the event that an individual cannot attend a meeting the agency or agencies represented may substitute another individual for that meeting.

Section 3.10. Committees. Standing committees, including the Nominating Committee and Budget and Finance Committee, shall be established by the Board of Trustees. Temporary committees may be established by the Chairperson of the Board of Trustees. Members of the Committees shall be appointed by the Chairperson and shall consist of representatives of the Members and Affiliates of the Region. These committees shall be chaired by a Trustee so appointed by the Chairperson and approved by the Trustees. All standing committees shall consist of at least three members. Standing committees may utilize at their discretion, whatever expertise may be necessary in an advisory capacity to assist them in the discharge of their responsibilities. All standing committees shall keep such record of transactions of their meetings as the Trustees shall direct and shall report all actions to the Executive Council and annually to the Trustees.

Section 3.11. Resignations. Trustees may resign by submitting to the Chairperson their resignations, which (unless otherwise specified herein) need not be accepted to make it effective and shall be effective immediately upon its receipt.

Section 3.12. Vacancies. If any person appointed as a Trustee by a Member or Affiliate as hereinabove provided, shall cease for any reason to serve as a Trustee, such a Member or Affiliate may, by written instrument filed with the Executive Director, appoint another person to fill such vacancy.

ARTICLE IV -- Officers of the Region

Section 4.01. Designation and Election. The Trustees shall elect the officers of the Region which shall consist of a Chairperson, a Vice-Chairperson/Chairperson-Elect, a Secretary, and a Treasurer and such other officers or assistant officers as may from time to time be determined by the Board of Trustees. The officers shall be elected annually from among the Trustees. The Chairperson and Vice-Chairperson-Elect shall serve for a term of one year, from 1 October through 30 September of the fiscal year. Upon expiration of the term of Vice-Chairperson/Chairperson-Elect, the person holding that office shall assume the duties of Chairperson for the succeeding year. The Secretary and the Treasurer shall serve for a term of two years, from 1 October until 30 September of the following fiscal year. Election of the Secretary and the Treasurer will take place in alternate years. A list of those nominated for officers shall be made known to the Trustees at least two weeks prior to the annual meeting of the Trustees. All vacancies in offices shall be filled by the Trustees. The Trustees may secure the fidelity of any or all of the officers by bond or otherwise.

Section 4.02. Chairperson. The Chairperson shall preside at all meetings of the Trustees and of the Executive Council. The Chairperson shall have such further powers and duties as the Trustees may from time to time prescribe.

Section 4.03. Vice-Chairperson/Chairperson-Elect. The Vice-Chairperson/Chairperson-Elect shall assist the Chairperson in the performance of official duties, shall serve as parliamentarian at meetings of the Trustees and the Execu-

tive Council, and shall have and exercise such powers and duties as shall be conferred upon the office from time to time by the Trustees. In the event of the absence or incapacity of the Chairperson, the Vice-Chairperson/Chairperson-Elect shall have and exercise all the powers and duties of the Chairperson.

Section 4.04. Secretary.

(a) The Secretary shall exercise such power and duties as shall be conferred upon the office from time to time by the Trustees.

(b) It shall be the duty of the Secretary:

(1) to keep or cause to be kept at the registered office of the Region a membership book, containing the name and address of each Member and Affiliate together with the names of their Trustees and Alternates, and a copy of the Articles of Incorporation and of these Bylaws; and

(2) to keep or cause to be kept at the registered office of the Region an original or duplicate record of the proceedings of the Members and Affiliates, of the Trustees, and of any committees appointed by the Board.

Section 4.05. Treasurer.

(a) The Treasurer shall exercise such power and duties as shall be conferred upon the office from time to time by the Trustees.

(b) It shall be the duty of the Treasurer:

(1) to see that lists, book reports, statements, tax returns, certificates, and other documents and records required by law or sound business practices are properly prepared, kept, and filed; and,

(2) to chair the Budget and Finance Committee.

ARTICLE V -- Users Council

Section 5.01. Number, Selection, and Term of Office.

(a) Each Member and Affiliate, which has signed and met the Conditions of Agreement for a particular service, shall be entitled to appoint one Representative and one Alternate, designated in writing by name or title, to that particular service Users Council. The officers shall serve for one year, from 1 October through 30 September of the fiscal year; no officer shall serve more than two consecutive full terms. The number of the Users Council which shall constitute the full Users Council at any time shall be equal to the number of persons at the time duly appointed to serve as Representatives.

(b) A full Users Council shall be appointed annually by the Members and Affiliates using the particular service by filing with the Council Chairperson a written instrument naming the person or persons so appointed. A full list of Representatives for each Users Council must be submitted to the Trustees for their information. The Representatives shall hold office until the annual meeting next following their appointment and until successors, if any, are appointed.

(c) Effective on the termination for any reason in the service of any Member or Affiliate, any person serving as Representative from that Member or Affiliate on the service Users Council shall cease to be a Representative and the number of persons constituting the full Users Council shall be reduced accordingly.

Section 5.02. Authority.

(a) The goals, policies, and fiscal operating procedures related to a particular service shall be established and managed by that service's Users Council.

(b) The annual budget of the Users Council must be presented to the Board of Trustees for its approval at the annual meeting.

(c) Monthly financial reports of the Users Council will be submitted to the Executive Council.

(d) All financial obligations related to a particular service are the responsibility of the Member or Affiliate libraries using the service, operating under the budget approved by the Users Council and approved by the Board of Trustees.

Section 5.03. Officers of the Users Council.

(a) The Users Council shall elect the officers of the Council which shall consist of a Chairperson, Secretary, and Treasurer and such other officers or assistant officers as may from time to time be determined by the Users Council.

(b) The Chairperson of each Users Council serves as an ex-officio member of the Executive Council without vote and does not supplant any duly elected and/or appointed member of the Executive Council. The Chairperson shall preside at all meetings of the Users Council.

(c) The Secretary shall keep or cause to be kept at the Registered Office of the Region an original or duplicate record of the proceedings of the Users Council.

(d) The Treasurer shall see that lists, book reports, statements, tax returns, certificates, and other documents and records required by law or sound business practices are properly prepared, kept, and filed at the Registered Office of the Region.

Section 5.04. Committees.

(a) Standing committees shall be established by the Users Council; temporary committees may be established by the Chairperson of the Users Council. The Chairperson of the Users Council shall appoint the chairperson of a committee from among the staff of the Users Council libraries; the committee chairperson shall appoint committee members with the advice and consent of the Users Council. Members of the committees may be drawn from Users Council libraries and non-Users Council Member or Affiliate libraries.

(b) Committee chairpersons will attend Users Council meetings.

(c) Committees will not incur any financial obligations without the approval of the Users Council.

Section 5.05. Quorum. At any meeting of the Users Council, the presence of a majority of Representatives shall be necessary and sufficient to constitute a quorum for the transaction of business. Each Representative shall have one vote. At every duly called and noticed meeting in which a quorum is present, acts adopted by the affirmative vote of a majority of Representatives shall be valid, except as otherwise provided herein or by law.

Section 5.06. Dissolution.

(a) Upon the vote to discontinue a particular service, it is the responsibility of the Users Council to draw up and approve a plan for dissolution, including dissolution of assets. This plan shall be presented to the Executive Council at one of its regular meetings for its approval. When approved, the plan will be submitted to the Board of Trustees for its approval, before any action to dissolve the service is undertaken.

(b) It is generally understood that the dispersment of assets will be amongst Users Council libraries in proportion to their contributions to the service and only after all financial obligations have been satisfied.

ARTICLE VI -- Contracts and Transactions

Section 6.01. Loans; Real Estate. Loans and guarantees shall be contracted on behalf of the Region only if authorized by the Board of Trustees. The purchase, sale, and lease of real estate shall require the approval of the Trustees.

Section 6.02. Signatures on Notes, Checks, Etc. All properly authorized notes, drafts, acceptances, checks, endorsements, guarantees, and all evidences of indebtedness of the Region whatsoever, shall be signed by such one or more officers of the Region and subject to such requirements as to counter-signature or other conditions, as the Board of Trustees from time to time specifically may designate.

Section 6.03. Execution of Instruments Generally. Unless otherwise specified by the Trustees, all properly authorized deeds, mortgages, contracts, and other instruments requiring execution by the Region shall be executed as set forth in Section 6.02.

Section 6.04. Permanent Staff. The Executive Council, subject to the approval of the Trustees, shall be authorized to employ a permanent staff, including an Executive Director, to assist in the conducting of the Region business. Employment contracts lasting longer than one year issued by the Executive Council need approval of the Trustees.

Section 6.05. Membership in Organizations. The Trustees shall have the right to enter into membership agreement with other organizations or cooperative endeavors as are deemed worthwhile and beneficial to the activities and purposes of the Region. The official representative of the Region to any such organization shall be the Chairperson of the Board of Trustees or a Trustee delegated by the Executive Council.

ARTICLE VII -- General Provisions

Section 7.01. Offices. The Region may have offices at such places within Upper Michigan as the Trustees specify.

Section 7.02. Financial Statements. The Trustees shall employ a certified public accountant (or firm thereof) to perform an annual audit of the financial statements of the Region, and shall distribute such audited financial statements together with the accountant's opinion thereon to the Trustees.

Section 7.03. Fiscal Year. Unless otherwise provided by the Trustees, the fiscal year of the Region shall begin on the first day of October and end on the thirtieth day of September each year.

Section 7.04. Archives. The Region shall establish or cause to be established an archival record of its proceedings at such places within Upper Michigan as the Trustees specify.

ARTICLE VIII -- Amendment of Bylaws

Section 8.01. Amendments. These Bylaws may be altered, amended and repealed, and new by-laws may be adopted, by resolution, by a majority of the Trustees in attendance at any annual meeting but only if notice of the proposed amendment or the general nature thereof is given at least two weeks prior to that meeting.

1984 MICHIGAN ANNUAL REPORT - NONPROFIT CORPORATIONS

FILING FEE
\$10.00

(Please read instructions on reverse side before completing form)

This report shall be filed by all nonprofit corporations on or before October 1, 1984. This report is required in accordance with the provisions of Section 911, Act 162, Public Acts of 1982. Penalties may be assessed under the Act for failure to file.

This Return Must be Filed on or before October 1, 1984

Insert Corporation Number **719494**

1. Corporate Name

SOUTHEAST MICHIGAN AUTOMATED LIBRARY NETWORK, INC.
2799 W. GRAND BLVD. HENRY FORD MEDICAL LIBRARY
DETROIT MI 48202

FILING FEE: \$10.00
 MAKE REMITTANCE PAYABLE TO "STATE OF MICHIGAN"

RETURN TO:
 DEPARTMENT OF COMMERCE CORPORATION AND SECURITIES BUREAU
 P.O. BOX 30057
 LANSING, MICHIGAN 48909

2. Resident Agent

NARDINA L. NAMETH

3. Registered Office Address in Michigan - No., Street, City, Zip

2799 W. GRAND BLVD. HENRY FORD MEDICAL LIBRARY
DETROIT MI 48202

4. Federal Employer No.

5. Term of Existence (if not perpetual)

PERPETUAL

6. The Act Under Which Incorporated (if other than 1931, P.A. 327, as amended, or 1982, P.A. 162)

7. State of Incorporation

MI

8. Incorporation Date

03/12/1984

9. Date of Admittance (Foreign corp.)

10. Corporate Officers and Directors

	OFFICE	NAME, STREET & NUMBER, CITY, STATE & ZIP CODE
If Different than President	President	
	Secretary	
	Treasurer	
	Vice-President	
If Different than Officers	Director	
	Director	
	Director	
	Director	

11. The authorized capital stock, if any, is \$ _____, and the number of shares is _____

12. The purposes of the corporation: _____

13. The value of all real and personal property and cash owned at time of filing this report: \$ _____ (if none, insert "None")

14. The nature and kind of business in which the corporation has engaged during the year covered by this report: _____

15. What, if any, distribution of funds has been made to any members or shareholders during the year covered by this report: _____ (if none, insert "None")

16. A statement of the aggregate amount of any loans, advances, overdrafts or withdrawals and repayments thereof made to or by officers, directors, members, or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security at the time of filing. _____ (if none, insert "None")

DATE SIGNED _____

BY _____
 Signature of Authorized Officer or Agent

**MICHIGAN ANNUAL REPORT - NONPROFIT CORPORATIONS
INSTRUCTIONS FOR FILING FORM C&S-2000**

I. WHO MUST FILE

Each domestic or foreign corporation authorized to conduct affairs in Michigan under Act 162, P.A. of 1982, is required to file a report.

II. DUE DATE - ON OR BEFORE OCTOBER 1 FILING FEE - \$10.00

One original copy of the report must be filed on or before October 1 of this year, with the \$10.00 filing fee. An extension of time may be granted for good cause shown, providing the request is filed before the due date.

III. INSTRUCTIONS FOR PREPARATION OF REPORT - PLEASE COMPLETE IN INK OR BY TYPEWRITER

If the corporation has been sent an annual report form with preprinted information, the preprinted information should be verified for correctness. If any of the information is inaccurate, please correct the report in ink. All questions should be answered.

All partially preprinted forms include a Corporation Identification Number. Please refer to this number in any future correspondence or filings with the Corporation and Securities Bureau. Enter the identification number, if known, in the space above Item 1 if the number is not shown on the report.

Reports will be returned for correction if improperly executed, incomplete, or illegible. Annual reports are microfilmed; therefore, it is important that reports are legible so that a useable microfilm copy can be obtained. Annual reports with poor black and white contrast will be rejected.

Item 1. The corporation name must be entered exactly as shown on the Articles of Incorporation or the latest Amendment.

A domestic corporation may change its name by filing a Certificate of Amendment to the Articles of Incorporation with the Corporation and Securities Bureau. Forms and instructions for this purpose will be forwarded upon request.

Items 2. & 3. The name of the resident agent in Item 2 and the address of the registered office in Item 3 must agree with the name of the resident agent and the address of the registered office on file with the Corporation and Securities Bureau.

The Act requires that a Certificate be filed with the Bureau whenever the registered office and/or resident agent is changed. If there has been a change in this information, please advise and the necessary forms will be forwarded.

Item 4. Insert the Federal Employer Number. If none has been issued, indicate "none."

Item 5. Insert the term of corporate existence, if other than perpetual.

Items 6. - 9. Insert the Act under which the corporation was incorporated, if a Michigan corporation (Item 6); the state of incorporation (Item 7); the incorporation date (Item 8); and the date of admittance to Michigan, if a foreign corporation (Item 9).

Item 10. Insert the current names and residence addresses of the corporate officers and directors. Each address must include the street and number, city, state and zip code. If space is insufficient, attach a separate sheet.

Item 11. Indicate the amount of authorized capital stock, if any, and the number of shares of each class authorized. If there is more than one class of stock, attach a separate description of each class and the number of shares authorized.

Item 12. Provide a brief description of the purposes of the corporation.

Item 13. Indicate the value of all real and personal property and cash owned at the time of filing this report.

Item 14. Provide a brief statement of the nature and kind of business engaged by the corporation.

Item 15. Insert a statement describing the distribution of funds, if any, made to any members or shareholders.

Item 16. Insert a statement of the aggregate amount of any loans, advances, overdrafts or withdrawals and repayments made to or by officers, directors, members, or shareholders of the corporation other than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security at the time of filing.

IV. SIGNATURE

The report must be signed in ink by an authorized officer or agent of the corporation as of the date of signing.

V. FAILURE TO FILE

Michigan corporation - Dissolution is automatic when a corporation fails to file the report or pay the filing fee for a period of 2 years from the date on which the annual report was due.

Foreign corporation - A Certificate of Authority is subject to revocation for failure to file a report or pay the filing fee within one year from the date on which the annual report was due.

Sections 931, 932 and 935 provide specific penalties for knowingly making or filing a false or fraudulent report, certificate or other statement required by the Act.

MAIL THE COMPLETED ANNUAL REPORT WITH REMITTANCE TO:

Michigan Department of Commerce
Corporation and Securities Bureau
Corporation Division
Post Office Box 30057
Lansing, Michigan 48909
Telephone: (517) 373-0488

(Non-Profit Domestic Corporations)
ARTICLES OF INCORPORATION

**TRUE COPY
MICHIGAN DEPARTMENT
OF COMMERCE**

These Articles of Incorporation are signed by the incorporators for the purpose of forming a non-profit corporation pursuant to the provisions of Act 327, Public Acts of 1931, as amended, and Act 284, Public Acts of 1972, as amended, as follows:

ARTICLE I
The name of the corporation is MICHIGAN LIBRARY CONSORTIUM

ARTICLE II
The purpose or purposes for which the corporation is organized are as follows:
The Corporation is formed exclusively for the purposes of:

- Facilitating the sharing of information resources among the libraries of Michigan;
- Enhancing the availability of information resources to the citizens of the State of Michigan;
- Encouraging the libraries of Michigan to institute such cost-effective practices and procedures which may be made possible through state-wide interlibrary cooperation; and
- Enabling the libraries of Michigan to link up and interact with regional and national Electronic Bibliographical Communication Systems.

The foregoing statement of corporate purposes shall be construed as a statement of both purposes and powers, and not as restricting or limiting in any way the general powers of this corporation, or their exercise and enjoyment, as they are expressly or impliedly granted by the Laws of the State of Michigan.

ARTICLE III
Said corporation is organized upon a Non-Stock basis.
(Stock share or non-stock)

(a)
If upon a stock-share basis fill in the following)
The total number of shares of stock which the corporation shall have authority to issue is _____
of the par value of \$ _____ per share.
A statement of all or any of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof is as follows: _____

(If upon a non-stock basis strike ... paragraph (a) above and fill in the following)

The amount of assets which said corporation possesses is:

*Real Property: None

*Personal Property: \$1,350 Cash

*(Give description and value. If none, insert "none")

Said corporation is to be financed under the following general plan:

The Corporation will be financed through the assessment of membership fees and dues and through the solicitation of contributions. (The entire revenue derived by the Corporation shall be applied to its support and to increase the efficiency and facilities thereof.)

ARTICLE IV.

The address of the initial registered office is:

Libraries, Michigan State University East Lansing Michigan 48824
(No. and Street) (Town or City) (Zip Code)

The mailing address of the initial registered office is (need not be completed unless different from the above address):

Michigan 48824
(No. and Street) (Town or City) (Zip Code)

The name of the initial resident agent at the registered office is:

Richard E. Chapin

ARTICLE V.

The names and addresses of the incorporators are as follows:

Names	Residence or Business Address
<u>Vera M. Pings</u>	<u>University Libraries, Wayne State University, Detroit, MI, 48202</u>
<u>Robin Downes</u>	<u>University Library, University of Michigan, Ann Arbor, MI, 48104</u>
<u>Richard E. Chapin</u>	<u>Libraries, Michigan State University, East Lansing, MI, 48824</u>

ARTICLE VI.

The names and addresses of the first board of directors (or trustees) are as follows:

NAMES

RESIDENCE OR BUSINESS ADDRESS

Vern M. Pings - University Libraries, Wayne State University, Detroit, MI. 48202

Robin Downes - University Library, University of Michigan, Ann Arbor, MI. 48104

Richard E. Chapin - Libraries, Michigan State University, East Lansing, MI. 48824

ARTICLE VII.

(Here insert any desired additional provisions authorized by the Acts)

See Attached List - Articles 7 through 11

IN WITNESS WHEREOF, the undersigned, the incorporators of the above named corporation, have hereunto signed these Articles of Incorporation on this 26 day of March 19 74

Vern M. Pings
Vern M. Pings

Robin Downes
Robin Downes

Richard E. Chapin
Richard E. Chapin

(See Instructions on Cover or Side)

ARTICLE VII.

The corporation is not organized for the pecuniary profit of its trustees, officers, or members; nor may it issue stock nor declare nor distribute dividends, and no part of its net income shall inure to the benefit of any trustee, officer or member; and any balance of money or assets remaining after the full payment of corporation obligations of all and any kinds shall be devoted solely to the purposes of the corporation.

ARTICLE VIII.

Membership in the corporation shall be of such classes and shall be governed by such rules of admission, retention, suspension and expulsion as the By-Laws shall prescribe. All members shall be public and/or private libraries who are recognized as exempt under 501 (c)(3) of the Internal Revenue Code.

ARTICLE IX.

In the event of the liquidation or dissolution of the corporation, none of the property of the corporation shall be distributed in liquidation to any member, trustee, officer or private individual, but the net assets of the corporation remaining after payment and satisfaction of its proper liabilities shall be disposed of in a manner which shall be just and consistent with the stated purposes of the corporation.

ARTICLE X.

In furtherance, and not in limitation, of the powers conferred by statute and in the By-Laws, the Board of Trustees is expressly vested with the authority of, on behalf of the corporation, to borrow money and to purchase, sell, lease or otherwise dispose of any real estate of the corporation.

ARTICLE XI.

The Articles of Incorporation and the By-Laws of the Corporation or any section of either of them may be altered, repealed or added to, and the members and trustees of the corporation may take such corporate action, to the extent and in the manner now or hereafter permitted or prescribed by statute to merge, liquidate the assets of the corporation or sell its assets, and all rights herein conferred upon members and granted subject to this reservation.

(Please do not write in spaces below — for Department use)

MICHIGAN DEPARTMENT OF COMMERCE — CORPORATION AND SECURITIES BUREAU	
Date Received	<p style="text-align: center;">FILED APR 17 1974 <i>Richard J. ...</i> DIRECTOR Michigan Department of Commerce</p>
MAR 29 1974	
APR 16 1974	

C 69-100

INFORMATION AND INSTRUCTIONS

Articles of Incorporation—Non-Profit Corporations (Excluding Ecclesiastical Corporations)

1. Article II should state, in general terms, the specific purpose or object for which the corporation is organized.
2. Article V—At least three incorporators are required. Article VI—At least three directors (or trustees) are required. The addresses should include a street number and name (or other designation), in addition to the name of the city and state.
3. The duration of the corporation should be stated in the Articles only if the duration is not perpetual.
4. The Articles must be signed in ink by each incorporator. The names of the incorporators as set out in Article V should correspond with the signatures.
5. An effective date, not later than 90 days subsequent to the date of filing, may be stated in the Articles of Incorporation.
6. One original copy of the Articles is required. A true copy will be prepared by the Corporation and Securities Bureau and returned to the person submitting the Articles for filing.
7. FEES: \$10.00 filing plus \$10.00 franchise, total \$20.00. Checks or money orders should be made payable to the State of Michigan.

8. Mail Articles of Incorporation and fees to:

Michigan Department of Commerce
Corporation and Securities Bureau
Corporation Division
P. O. Drawer C
Lansing, Michigan 48904

Appendix C



Leo T. Dinnan
Director

WAYNE OAKLAND LIBRARY FEDERATION

33030 VAN BORN ROAD
WAYNE, MICHIGAN 48184
(313) 326-8910

Douglas A. Whitaker
Deputy Director

BIBLIOGRAPHIC AUTOMATION DEVELOPMENT AGREEMENT

April 18, 1980

I PREAMBLE

There shall be formed within WOLF a Bibliographic Automation Development Fund and a Bibliographic Automation Management Council for purposes of developing and establishing automated services for the benefit of all member libraries and insuring progress consistent with the changing status of the technology.

A separate fund outside the regular operating budget of WOLF will be established for the above purpose from which monies will be expended only upon recommendation of the Management Council described below. The fund will consist of an \$80,000 credit from LSCA I (1979) if approved by the State Board, an equivalent or nearly equivalent amount made up by contributions from member libraries, and revenues received from other sources.

A Management Council shall be established by contract under section 8 and 14 of 1977 P.A. 89. This Council shall be made up of one representative each from WOLF and each member library which deposits in the fund described above. This Council shall meet and organize itself to carry out the purpose stated above. It shall be responsible for determining expenditures from the fund and the conditions of access to the services by other WOLF members, other cooperatives or non-public libraries.

II AGREEMENT

This agreement is made this _____ day of _____ A.D., 1980, by and between the Wayne Oakland Library Federation Cooperative Board, hereinafter referred to as WOLF, a body corporate and a juristic entity, and the several signatory member libraries hereinafter referred to as Council Members.

WHEREAS, the WOLF and all its member libraries desire to avail themselves of the benefits of bibliographic automation, and,

WHEREAS, there is a need for the development of a substantial level of expertness to do so, and,

WHEREAS, the Council Members are willing to support the development of such expertness and make the same available to the total membership of WOLF,

NOW, THEREFORE, it is mutually agreed as follows:

II AGREEMENT (continued)

1. There is hereby created a Bibliographic Automation Management Council composed of the WOLF Director or his designee and one representative from each of the signators other than WOLF now or hereafter meeting the terms of this agreement.
2. This Council is charged to develop and recommend policies, determine sources of revenue, and recommend expenditures which in their judgment will best serve the membership of WOLF through bibliographic automation, including, but not limited to, circulation controls, cataloging, interlibrary loan, and collection development.
3. Initial capitalization for bibliographic automation shall come from the 1979 LSCA Grant and from equal contributions from each member of the Management Council. The amount to be contributed shall be \$15,000, and shall be paid in full on or before July 31, 1980.
4. Until July 31, 1980, the present member libraries of the Automated Circulation Task Force shall comprise the interim Management Council. The interim council shall set the amount of contributions referred to in paragraph 3, above.
5. The WOLF shall apply for a grant under the Library Services and Construction Act, Title I, which shall include a request for \$80,000 to be used through said fund in support of this agreement. In the event that request shall be refused or the funds denied or unreasonably restricted in the judgment of the Council, this agreement shall become null and void.
6. Expenditures from said fund shall be made by WOLF only upon recommendation of the Council.
7. The Council shall recommend to WOLF the terms, costs, and procedures by which other WOLF members, other cooperatives, or non-public libraries may have access to the automated bibliographic services, provided, however, that the conditions of access by WOLF members shall not be unreasonably restrictive.
8. The Council shall meet within thirty (30) days of the effective date of this agreement to organize and adopt such bylaws for its own governance as it may choose, except that the definition of a quorum shall require the attendance of the WOLF Director or his designee.

This agreement shall be effective one minute after midnithgt on the _____ day of _____, A.D., _____ providing at least five WOLF member libraries shall have become parties hereto. Failing that, this agreement shall become null and void and contributions collected from member libraries under Section II, paragraph 3 of this agreement shall be returned in full. Additional WOLF member libraries may become party to this agreement and become Council Members by signing this agreement and complying with the terms listed above. This agreement shall remain in effect continuously from the above date until amended or abrogated by consent of all parties, providing, however, that either the WOLF Board or the Bibliographic Automation Management Council may terminte the agreement on September 30, of any year by serving written notice of intent to do so no later than the preceding March 30. In the event the WOLF Board terminates the agreement, all moneys and/or equities remaining in or to the credit of the fund shall be returned to the member-contributors, or, if the amount remaining in the fund is insufficient fully to reimburse all contributors, then each contributor shall be reimbursed in part pro rata, in the proportion that his contribution bears to the total of all contributions deposited in the fund. In the event the Council terminates the agreement, then any moneys and/or equities remaining in or to the credit of the fund shall become and remain the sole property of the WOLF, to be used in the discretion of the WOLF Board for any bibliographic purpose of WOLF.

IN WITNESS THEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

WAYNE OAKLAND LIBRARY FEDERATION

by _____ on _____

by _____ on _____

LIBRARY

by _____ on _____

by _____ on _____

LIBRARY

by _____ on _____

by _____ on _____

1701-1720] or comparable state legislation [see Ch. 400].

D. Drafting Guide for Joint Venture Agreements

§ 380.130 Preparation of Joint Venture Agreement

1. Identify each joint venturer:
 - a. Name and address.
 - b. If joint venturer is an organization rather than an individual, specify the type of organization, e.g., "an Illinois corporation."
 - c. If desired, parties may also be identified by their respective roles in joint venture, e.g., "Owner" and "Contractor" [see § 380.201[FORM]].
2. State that the parties intend to form a joint venture on the terms and conditions set forth in the joint venture agreement.
3. Specify purpose of joint venture.
 - a. Purpose should be described with particularity; e.g., "to purchase, hold, and resell" the joint venture property [see §§ 380.200[FORM] ¶ 1, 380.201[FORM] ¶ 1].
 - b. Property to be acquired by joint venture should be identified by address and legal description.
 - c. Purpose of joint venture should be limited to that specified in the joint venture agreement.
4. State name of joint venture, if desired [see § 380.201[FORM] ¶ 2].

ILLINOIS NOTE: A partnership or corporation which is a member of a joint venture has statutory authorization to conduct joint venture business in the joint venture name [Ill. Rev. Stat. Ch. 32 § 211.1].
5. State location of office of joint venture, if desired [see § 380.201[FORM] ¶ 3].
6. Specify how and by whom title to joint venture property will be held.

- a. Joint venturers to hold title as tenants in common [see § 380.200[FORM] ¶ 3].
 - b. Title to be held by one joint venturer on behalf of joint venture [see § 380.201[FORM] ¶ 4(a)].
 - c. ILLINOIS/INDIANA: Title to be held under a land trust [see Ch. 354].
 - d. Other arrangement.
7. If property will be purchased by the joint venture (as opposed to property already held by one or more joint venturers individually), provide details:
- a. Known or anticipated conditions of purchase may be specified.
 - b. Contract of sale, option, or other document may be incorporated by reference into the joint venture agreement [see § 380.200[FORM] ¶ 2].
8. Specify each party's contribution to the joint venture.
- a. All contributions should be identified with particularity, especially where services or other non-cash items are involved.
 - b. Time, place, and manner of making each contribution should be clearly specified.
 - c. If all joint venturers will contribute only cash or other identical contributions, a simple provision specifying equal contributions may be used [see § 380.200 ¶¶ 4 (initial contributions), 5 (subsequent contributions)].
 - d. If the contributions are to be unequal or of different types of items or services, the contribution of each party should be itemized in a separate provision [see § 380.201 ¶¶ 4, 5].
 - e. Noncash contributions may be given a specified cash value [see § 380.201 ¶ 4(a) (specified value of real property)].
 - f. Provision should be made for the following items:

- (1) Cost and incidental expenses of acquiring joint venture property.
 - (2) Any services to be rendered by any of the joint venturers.
 - (3) Installment or mortgage payments due on the joint venture property.
 - (4) Taxes and assessments against the joint venture property.
 - (5) Any other noncash items to be contributed by any joint venturer.
- g. The joint venture agreement may specify the remedies available to the joint venturers if a member of the joint venture fails to make a contribution as required under the agreement [see §§ 380.200[FORM] ¶ 6, 380.201[FORM] ¶ 22].
9. If any additional outside financing (such as a construction loan) will be necessary, include a provision stating that the joint venture will attempt to obtain such financing and specifying acceptable terms and conditions, if desired [see § 380.201[FORM] ¶ 7].
10. Include provisions specifying responsibilities of the parties for management and control of the joint venture, if any allocation or division of responsibilities is desired.

NOTE: While the parties have considerable leeway with respect to allocation of authority and responsibility, there are two potential problems in connection with severe restrictions upon a joint venturer's powers of management and control. The first is that centralization of management is one of the factors considered by the Internal Revenue Service in determining whether an organization will be classified as a partnership or an "association" for federal income tax purposes [see Ch. 61, § 61.41(4)]. The second is that such restrictions may result in the interest being classified for purposes of the securities laws as an "investment contract," which is a scheme involving an investment of money in a common enterprise with profits to come solely from the efforts of others [Securities & Exch. Comm'n v. Howey Co. (1945) 328 U.S. 293, 298-299, 301, 90 L. Ed. 1244, 66 S. Ct. 1100].

- a. Agreement should specify that all parties have

equal rights of management and control, except as otherwise provided [see §§ 380.200[FORM] ¶ 7, 380.201[FORM] ¶ 16].

b. One joint venturer may be delegated responsibility for management of the day-to-day activities of the joint venture [see § 380.200[FORM] ¶ 7], such as:

- (1) Making necessary disbursements to cover any installment payments or taxes owed by joint venture;
- (2) Notifying the other joint venturers that their individual contributions to such payments are due;
- (3) Incurring any incidental expenses necessary to the joint venture in the ordinary course of business;
- (4) Keeping books and records of the joint venture, and overseeing preparation of its tax return;
- (5) Receiving and depositing in the joint venture account any amounts paid to the joint venture, such as rental income or tax refunds; and
- (6) Any other specific acts contemplated by the joint venturers.

c. The responsibility for specific individual tasks may be divided among the joint venturers [see § 380.201 [FORM] ¶¶ 6-12].

NOTE: A division of responsibility is especially advantageous where management of a particular joint venture activity, such as a construction project, requires special expertise possessed by one of the joint venturers [see § 380.131].

d. Specific responsibilities that are sometimes delegated to a particular party:

- (1) Negotiations for acquisition of property;
- (2) Procurement of necessary financing [see § 380.201[FORM] ¶ 7];

- (3) Construction-related matters [see § 380.131; see also § 380.201[FORM] ¶¶ 6-10];
 - (4) Procurement of insurance [see § 380.201[FORM] ¶ 11; see also § 380.131 ¶ 6 (insurance on construction projects)];
 - (5) Management of rental or income property [see §§ 380.200[FORM] ¶ 11, 380.201[FORM] ¶ 12]; and
 - (6) Negotiations in connection with disposition of property.
- e. Any limitations on any delegated powers and responsibilities should be clearly specified, such as:
- NOTE: Limitations on the authority of joint ventures to bind the joint venture will not necessarily relieve the joint venture from liability to third parties [see § 380.03(2)].
- (1) Power to revoke a delegation of authority [see § 380.200[FORM] ¶ 7].
 - (2) Limitations on dollar amounts of expenditures that can be incurred without the consent of the other joint venturers, or requirement of adherence to a budget [see § 380.200[FORM] ¶ 7(c)].
 - (3) Prohibition against certain activities that otherwise would be within the scope of the authority delegated [see, e.g., § 380.200[FORM] ¶ 7(c) (prohibition against capital improvements in joint venture property)].
 - (4) Requirement of ratification of specific acts by other joint venturers.
- f. Agreement should state whether or not any joint venturer will be entitled to reimbursement for expenses incurred on behalf of the joint venture or to compensation for discharging any responsibilities on the joint venture's behalf [see §§ 380.200[FORM] ¶ 6, 380.201[FORM] ¶ 15].

11. Specify how and for what purposes joint venture

property will be operated prior to sale [see §§ 380.200[FORM] ¶ 11].

NOTE: Such a provision should be included even if the joint venture plans to sell the property as soon as possible, since there is usually no guarantee of an immediate sale and an interim use under such circumstances might be financially desirable.

12. Provide for sale of the joint venture property [see §§ 380.200[FORM] ¶ 9, 380.201[FORM] ¶ 12].

NOTE: Any provisions pertaining to the sale of the joint venture property should be flexible and should not bind the joint venture to terms that may be undesirable or unobtainable.

- a. Length of time property is desired to be held before sale.
- b. Amount of profit desired.
- c. Preferred terms, if any.
- d. Consent requirements.

NOTE: The consent of all the joint venturers to the terms of sale should be required.

13. Specify the manner in which profits and losses will be divided among the joint venturers [see §§ 380.200[FORM] ¶ 10, 380.201[FORM] ¶¶ 13, 14].

NOTE: Profits and losses for tax purposes should be distinguished from cash distributions.

- a. What profits will be divided.
 - (1) Proceeds from sale of joint venture property.
 - (2) Income from rental or operation of joint venture property.
 - (3) Other income.
- b. When profits will be disbursed.
 - (1) As received by joint venture.
 - (2) Upon termination of joint venture.
 - (3) At some intermediate date, such as quarterly or annually.
- c. How profits will be disbursed.

NOTE: The allocation to a joint venturer under the joint venture agreement of income, gain, loss, deduction, or credit (or any item thereof) will not be upheld for federal income tax purposes unless it has substantial economic effect independent of income tax consequences [I.R.C. § 704(b)].

- (1) Specified expenses of joint venture or individual joint venturers to be paid prior to disbursement of funds.
 - (2) Amount or proportion of net profits to be disbursed to each party.
 - (3) Order of disbursement (e.g., one party to be entitled to the first \$25,000).
- d. How any losses will be shared, if manner of distribution will differ from distribution of profits.
14. Specify when joint venture will commence and circumstances under which it will terminate [see §§ 380.200[FORM] ¶ 12, 380.201[FORM] ¶ 20].
- a. Joint venture will normally commence upon execution of agreement.
 - b. Circumstances upon which joint venture may be made to terminate:
 - (1) Fulfillment of purpose.
 - (2) Impossibility of fulfillment.
 - (3) Death of a party.
 - (4) Insolvency of a party [see § 380.201[FORM] ¶ 21 (defining insolvency)].
 - (5) Unauthorized assignment of interest in joint venture.
 - (6) Failure to perform duties required under joint venture agreement.
 - c. The joint venture agreement may establish specific remedies available to the joint venturers in the event that one breaches the joint venture agreement [see, e.g., § 380.201[FORM] ¶ 22].
15. Include arbitration provision, if desired [see § 380.201[FORM] ¶ 19].

NOTE: Inclusion of an arbitration provision may be advantageous because it provides an alternative to terminating the joint venture in the event that the parties are unable to agree on a particular course of action.

16. Include provision for establishment of joint venture bank account [see §§ 380.200[FORM] ¶ 14, 380.201[FORM] ¶ 18].

NOTE: The joint venture agreement should specify who may deposit and withdraw funds from the joint venture account, and how many signatures are required. If one joint venturer is given responsibility for the day-to-day management of the joint venture's affairs, that person should also be given control over the joint venture account.

17. Include provision either prohibiting or establishing terms and conditions for assignment of any joint venturer's interest in the joint venture [see §§ 380.200[FORM] ¶ 13, 380.201[FORM] ¶ 20(e)].
18. Include provision establishing the joint venture's accounting procedures [see §§ 380.200[FORM] ¶ 15, 380.201[FORM] ¶ 17].
- a. Whether joint venture will be on a cash or accrual basis.
 - b. Frequency of accountings and/or reports to be rendered to joint venturers.
 - c. Joint venturers to have right to inspect books and records.
 - d. Taxable year of joint venture.

NOTE: Ordinarily, the joint venture will have to adopt the taxable year of its principal joint venturer [see I.R.C. § 706(b)(1)] which will, if the principal joint venturer is an individual and not a corporation, in all probability be a calendar year. A principal joint venturer is defined as a person or entity having a 5 percent or more interest in the profits or capital of the joint venture [see I.R.C. § 706(b)(3)].

19. Include provision establishing method for giving any required notices [see § 380.200[FORM] ¶ 16].
20. Include provision making terms of joint venture agreement binding on the joint venturers' heirs and assigns [see § 380.200[FORM] ¶ 17].

21. Include provision stating that joint venture agreement constitutes the complete and sole agreement of the parties [see § 380.200[FORM] ¶ 18].
22. Include provision permitting amendment or modification of the agreement by written agreement by all or a specified percentage of the parties [see § 380.200[FORM] ¶ 19].
23. Any documents incorporated by reference into the joint venture agreement, such as a contract of sale, should be attached to the completed agreement.

§ 380.131 Additional Provisions for Joint Ventures Involving Development and/or Construction

NOTE: Joint ventures are often formed to carry out real estate development and construction projects. Where the joint venture involves a development or construction project, the joint venture agreement should contain specific provisions covering the rights and duties of the parties with respect to the construction phase of the venture.

1. Include provision governing any necessary construction financing [see § 380.201[FORM] ¶ 7].
 - a. Which joint venturer has the responsibility for procuring the necessary financing.
 - b. Terms and conditions on which financing is desired or has been obtained [see Ch. 404].

NOTE: If possible, the joint venture agreement should not bind the joint venture to obtain financing only on specific terms and conditions, since the desired terms and conditions may not be obtainable. It is preferable either to provide that financing will be obtained on the most favorable terms available, or to state the specific terms desired but permit deviation from such terms, if necessary, by agreement of all or a specified number of the joint venturers.

2. Include provision governing procurement of the necessary architectural and engineering plans and specifications [see § 380.201[FORM] ¶ 6].
 - a. Which joint venturer has the responsibility for obtaining such plans.