

**Joint Exercise of Powers Agreement for the Energy Council**

This Agreement is entered into and becomes effective April 12, 2013 by and between the undersigned public agencies, all of said parties referred to collectively as the “Agencies.”

**WITNESSETH**

A. Joint Exercise of Powers:

The Joint Exercise of Powers Act, Government Code section 6500 et seq. (the “Act”), provides that two or more public agencies by agreement may jointly exercise any power common to the contracting parties. It is the intent of the contracting Agencies to utilize this statutory authorization in this Agreement.

B. Energy Efficiency Leadership:

The Agencies desire to build on and further establish the record of Alameda County, and the cities and communities within the County, as leaders in developing and implementing sustainable energy initiatives that support a healthy environment and economy, an enhanced quality of life, and greater self-reliance for the region, by reducing energy demand, increasing energy efficiency, and advancing the use of clean, efficient, and renewable local resources.

**AGREEMENT**

NOW, THEREFORE, the Agencies agree as follows:

1. CREATION OF THE ENERGY COUNCIL

Pursuant to the Act, the Agencies hereby create a separate joint powers agency, which is named the Energy Council, to exercise in the manner set forth in this Agreement powers common to each of the Agencies. The Energy Council shall be a public entity separate from the Agencies within the meaning of Government Code section 6507. No debt, liability, or obligation of the Energy Council shall constitute a debt, liability or obligation of any Agency.

## 2. OBJECTIVE

The purpose of this Agreement is to provide a means by which the Agencies can more effectively develop and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources available in the region for the benefit of the Agencies and their constituents. To further that purpose, the Energy Council will work toward the following goals:

- a. To coordinate regional integrated energy resource planning efforts which promote use of sustainable, cleaner and affordable energy resources;
- b. To encourage consistency among policies and programs that are adopted and implemented by the Agencies;
- c. To increase the competitiveness of the region in obtaining funding and the ability of the Energy Council and the Agencies to establish strong partnerships with other stakeholders;
- d. To assist the Agencies in developing a long-term sustainable energy strategy and implementation plan;
- e. To increase awareness of, and enhance access to, energy conservation, energy efficiency, and renewable energy opportunities available to the region;
- f. To add value to, but not duplicate, energy services offered by utilities and others serving the region;
- g. To provide technical and policy assistance to the Agencies in implementing energy efficiency, integrated demand-side management, renewable generation programs, and meeting their goals in reducing greenhouse gas emissions;
- h. To conduct outreach to and assist the Agencies in strengthening staff capacity by identifying, seeking, and securing grant funds that support local agency staffing to work on energy efficiency programs;
- i. To keep key decision makers and stakeholders informed of energy-related policy, regulations, and market changes that are likely to impact the region;
- j. To support research, development, demonstration, innovation, and commercialization of sustainable energy technologies by public and private entities operating in the jurisdictions of the Agencies; and
- k. To identify, seek, and secure grant funds that support implementation of local agency climate plans throughout the Agencies.

### 3. DEFINITIONS

Certain words as used in this Agreement shall be defined as follows:

- a. "Board" shall mean the board constituted herein pursuant to this Agreement to administer and implement this Agreement.
- b. "Agency" shall mean each city or county which is a signatory to this Agreement.
- c. "Energy Council" shall mean the public and separate agency created by this Agreement.

### 4. POWERS

The Energy Council is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement including, without limitation, each of the following:

- a. To make and enter into contracts;
- b. To apply for and accept grants, advances, contributions, and donations of funds, property, services, and other forms of assistance from any public or private source;
- c. To provide funding, staffing, and other services to the Agencies and other entities for the conduct of programs under the general purview of the Energy Council;
- d. To employ or contract for the services of agents, consultants and such other persons or firms as necessary;
- e. To employ staff as necessary to carry out Energy Council programs, and to adopt and implement appropriate personnel policies and procedures as required;
- f. To make plans and conduct studies;
- g. To acquire, construct, manage, maintain, operate and control any buildings, works, or improvements;
- h. To lease real or personal property as lessee and as lessor;
- i. To sue and be sued in its own name;
- j. To adopt ordinances provided that an ordinance shall apply within the jurisdictional boundaries of any Agency only if approved by adoption of a resolution by that Agency. The foregoing restriction shall not apply to Energy Council ordinances that govern only the administration and operation of the Energy Council;

- k. To incur debts, liabilities or obligations, subject to limitations herein set forth (As provided in paragraph 1 of this Agreement, and pursuant to Government Code section 6508.1, no debt, liability, or obligation of the Energy Council shall constitute a debt, liability or obligation of any Agency);
- l. To adopt annually a budget setting forth all administrative, operational, and capital expenses for the Energy Council;
- m. To coordinate programs of mutual interest and provide administrative assistance with other organizations involved in related programs; and
- n. To exercise all other powers necessary and proper to carry out the provisions of this Agreement, provided, however that the Energy Council shall not have the power to:
  - (1) Impose taxes or fees on residents, businesses, property owners or any other entity, public or private;
  - (2) Require contributions or other payments from any Agency except pursuant to a separate agreement between the Agency and the Energy Council; or
  - (3) Operate as a community choice aggregator as that term is defined in Public Utilities Code section 331.1.

5. ORGANIZATION

The Energy Council shall be governed by the Board, which shall exercise all powers and authority on behalf of the Energy Council. The Board is empowered to establish its own procedures. The Board may do any and all things necessary to carry out the purposes of this Agreement. As a condition of exercising the powers set forth in section 4, above, the Energy Council shall ensure the existence of liability insurance and errors and omissions insurance for actions of staff and Board members and shall enter an agreement for organizational and administrative support with an existing public agency which agreement shall indemnify and hold harmless the Energy Council for liability arising out of said support.

- a. **Members of the Board.** The Board shall consist of one member of the governing body of each of the Agencies. The member from each Agency shall be the member that the Agency has appointed as its member to the board of the Alameda County Waste Management Authority. Each Agency shall have an alternate member and that member shall be the alternate member that the Agency has appointed to the Board of the Alameda County Waste Management Authority. Each member and alternate shall serve at the pleasure of the governing body of the appointing agency. Any change in

appointment of a member or alternate to the board of the Alameda County Waste Management Authority shall also be a change with respect to the Board of the Council. If an Agency is not a member of the Alameda County Waste Management Authority, the governing body of the Agency shall by resolution appoint one of its members to serve as a member and one of its members to serve as an alternate member of the Board after his or her appointment until a successor is selected. Each member and alternate shall serve at the pleasure of the governing body of the appointing agency. Any change in appointment of a member or alternate shall be by resolution of the governing body of the appointing agency.

- b. **Vote.** Each member shall have one vote except that the member selected by the City of Oakland shall have three votes and the members selected by the County of Alameda and the Cities of Fremont and Hayward shall have two votes.
  
- c. **Vote Required.** A simple majority of the Board members present shall be required for all actions.
  
- d. **Meetings of the Board.**
  - (1) Regular Meetings. The Board shall hold at least one regular meeting each year. The date, hour, and place at which each such regular meeting shall be held shall be fixed by resolution of the Board.
  - (2) Special Meetings. Special meetings of the Board may be called in accordance with provisions of law.
  - (3) Notice of Meetings. All meetings of the Board shall be held subject to the provisions of the Ralph M. Brown Act, Government Code section 54950 et seq., and other applicable laws of the State of California requiring notice of meetings of public bodies to be given.
  - (4) Minutes. The Board shall cause minutes of all meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to each Agency.
  - (5) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.
  
- e. **Rules of Procedure.** The Board shall adopt by resolution from time to time such rules of procedure for the conduct of its affairs as may be required.

6. PARTIES TO THIS AGREEMENT

For purposes of this Agreement, each Agency intends to, and does, contract with every other Agency that is a signatory to this Agreement and, in addition, with every public agency that becomes a member under Paragraph 7. The withdrawal of any Agency from this Agreement does not affect its validity or enforceability as to the remaining Agencies.

7. PROCEDURE FOR BECOMING MEMBER OF ENERGY COUNCIL

All of the Cities in Alameda County, and the County of Alameda, that have executed the Agreement by the effective date shall be members of the Energy Council. In addition, any city or county that shares and exercises powers in common with the Agencies may become a member of the Energy Council upon (1) presenting an adopted resolution to the Energy Council requesting to become a member of the Energy Council; (2) receiving Board approval of that request accepting the city or county to membership; and (3) signing this Agreement.

8. RESTRICTIONS UPON EXERCISE OF POWER OF ENERGY COUNCIL

This Agreement is entered into under the provisions of Government Code section 6500 et seq. concerning joint powers agreements. The powers to be exercised hereunder shall be subject to the restrictions upon the manner of exercising those powers as limited by law. The manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the County of Alameda. If at any time the County of Alameda is not a party to this Agreement, the manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the largest city within Alameda County that is an Energy Council member.

9. FUNDS, AUDIT, AND ACCOUNTING SERVICES

The Energy Council shall appoint an officer or employee as Finance Officer and that officer shall serve the combined functions of treasurer and auditor pursuant to Government Code sections 6505.5 and 6505.6 as those sections now exist or may be amended from time to time. The Finance Officer shall serve as the depositary and have custody of all Energy Council funds from whatever source, and shall perform the functions set forth in the above-referenced sections of the Government Code.

10. DISPOSITION OF ENERGY COUNCIL FUNDS UPON TERMINATION

- a. In the event of termination of the Energy Council where there is a successor public entity, which will carry on the activities of the Energy Council and assume its obligations, Energy Council funds, including any interest earned on deposits, remaining upon termination of the Energy Council and after payment of all obligations shall be transferred to the successor public entity.
- b. If there is no successor public entity, which would carry on any of the activities of the Energy Council or assume any of its obligations, Energy Council funds, including any interest earned on deposits, remaining upon termination of the Energy Council and after payment of all obligations, shall be distributed by the Board consistent with the purposes and terms of the original funding source(s).
- c. If there is a successor public entity which would undertake some of the functions of the Energy Council and assume some of its obligations, Energy Council funds, including any interest earned on deposits, remaining upon termination of the Energy Council and after payment of all obligations and payment to the successor public entity of funds for the functions and obligations assumed by the successor public entity, shall be distributed by the Board consistent with the purposes and terms of the original funding source(s).
- d. In the event the Energy Council is terminated all decisions of the Board with regard to determinations of amounts and recipients of distributed funds shall be final.

#### 11. WITHDRAWAL, TERMINATION OF MEMBERSHIP, TERMINATION OF ENERGY COUNCIL

Any Agency may withdraw from the Agreement following written notice submitted to the Energy Council at least six months in advance of the effective date of withdrawal. The membership of any agency which ceases to have powers in common with the parties to this Agreement shall terminate thirty (30) days after the agency ceases to have powers in common with the parties to this Agreement. If the Energy Council receives no funding for three consecutive fiscal years, the Board shall consider terminating the Energy Council.

#### 12. AMENDMENTS

This Agreement may be amended by the affirmative vote of the governing bodies of not less than two-thirds of all Agencies.

#### 13. NOTICES

All notices to Agencies shall be deemed to have been given when mailed to the governing body of each member Agency.



IN WITNESS WHEREOF, each Agency has executed approval of this Agreement and filed said approval with the Secretary of the Alameda County Waste Management Authority and said signatures are listed below or attached hereto.

Agency	Approval Date (If Any)
<p><b>County of Alameda</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Alameda</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Albany</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Berkeley</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Dublin</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>

<p><b>City of Emeryville</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>
<p><b>City of Fremont</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>
<p><b>City of Hayward</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>
<p><b>City of Livermore</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>
<p><b>City of Newark</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>

<p><b>City of Oakland</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Piedmont</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Pleasanton</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of San Leandro</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Union City</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>