

**MEMORANDUM OF UNDERSTANDING  
FOR ADMINISTRATION OF THE ENERGY COUNCIL**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the Alameda County Waste Management Authority (hereinafter “Authority”), and the Energy Council and shall be effective as of \_\_\_\_\_, 2013 (“effective date”).

**WHEREAS,**

- A. The Authority is a Joint Powers Agency created in 1976 for the purpose of preparing, adopting, revising, amending, administering, implementing, and enforcing the Alameda County Integrated Waste Management Plan and the Alameda County Hazardous Waste Management Plan.
- B. The Energy Council is a Joint Powers Agency created in 2013 for the purpose of providing a means by which its member 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 Energy Council member agencies and their constituents. As of the effective date each of the signatories is a member of the Authority.
- C. There are significant economies and various public benefits which may be realized through organizational consolidation of the Authority and the Energy Council.

**NOW, THEREFORE,** the parties do agree as follows:

**1. Purpose of Agreement**

- 1.1 The purpose of this Agreement is to make arrangements between the Authority and Energy Council for administration of the Energy Council’s business in a manner which most efficiently and effectively utilizes resources and avoids wasteful duplication of efforts by the Authority and the Energy Council. The general responsibilities of the Authority and Energy Council are delineated in this MOU, as are parameters for the shared use of resources, general guidelines for administration and processes for optimal coordination of programs.

**2. Organization**

- 2.1 The Energy Council shall be considered a separate and distinct entity organization with the unique powers and responsibilities conveyed to it by the Joint Powers Agreement creating the Energy Council and central organizational and administrative support provided by the Authority.
- 2.2 Staff support required to form and administer the Energy Council shall be provided by the Authority and funded by grants and other funds received by the Energy Council as hereinafter provided.

**3. Executive Director**

- 3.1 The incumbent Executive Director for the Authority shall be the Executive Director for the Energy Council and the various terms and conditions of the Executive Director's employment shall remain in effect independent of the this MOU.
- 3.2 The Energy Council has, through its Rules of Procedure, designated and conveyed to the Executive Director the administrative powers, responsibilities and authorities required of the position.
- 3.3 The Executive Director will organize and manage staff and resources in a manner so as to optimally carry out Authority and Energy Council programs within the fiscal limitations imposed by the funding received by the Energy Council.
- 3.4 Both the Authority and Energy Council recognize that the schedule of Authority, Energy Council and committee meetings may impose inordinate demands upon the Executive Director's time, and accordingly the Authority and Energy Council authorize the Executive Director to utilize professional level staff in a manner which may best facilitate meetings and the conduct of business by both parties.
- 3.5 As the Chief Administrative Officer for the Authority and the Energy Council, it shall be solely the Executive Director's responsibility to provide direction to staff in carrying out the policies and programs adopted by the Authority and by the Energy Council.
- 3.6 The performance of the Executive Director shall be evaluated by the Authority in accordance with the provisions of an employment agreement.

#### 4. **Personnel Administration**

- 4.1 A major purpose of this MOU is to facilitate the most cost effective joint use of personnel and other resources which may be required by the Authority and the Energy Council.
- 4.2 The Executive Director shall employ and assign work to staff based upon organizational plans, budgets and policies previously approved by the Energy Council Board.
- 4.3 Personnel policies, procedures and regulations shall be uniform and consistently applied throughout the organization. Any such policies, procedures and regulations adopted and previously implemented by the Authority at the time of execution of this MOU, shall remain in effect until later modified.
- 4.4 All regular and limited term staff employed, regardless of work assignment, shall be considered employees of the Authority, and shall have available to them the same benefits, group plans and other programs as are available to other employees of the Authority.
- 4.5 Notwithstanding other provisions regarding personnel administration, the Energy Council may at its option retain legal counsel independently of the Authority or may use the services of the Authority's counsel pursuant to this MOU.

**5. Budget**

- 5.1 Annual budgeting for the Energy Council shall be on a fiscal year basis, from July 1 through June 30 of the subsequent year. The Energy Council budget shall be developed and presented publicly and may be integrated with the budget of the Authority as part of a comprehensive and coordinated budget proposal.
- 5.2 An annual budget shall be adopted separately by the Energy Council. Separate accounting records will be maintained for the Energy Council in accordance with generally accepted accounting principles.
- 5.3 A separate trust fund shall be created for funding from grants received by the Energy Council, to be administered by the Energy Council. The Energy Council shall have exclusive control over the disposition and use of said trust fund.
- 5.4 The operational costs of personnel, facilities and other resources shall be allocated among the various trust funds administered by the Authority and the Energy Council, in accordance with the adopted budget, and reflecting a fair and reasonable distribution of such costs among the trust funds as may be agreed upon by the Authority and Energy Council. Where appropriate, administrative and overhead costs shall be allocated among the trust funds administered by the Authority and the Energy Council, on the basis of staffing assignments.
- 5.5 In general, the approved budget document shall be the authorization for the Executive Director to employ and assign staffing, acquire and allocate resources, and to contract for services and programs. Specific approval to enter into agreements, acquire property, make major purchases, and other significant actions will be the subject of more specific approval by the Energy Council.

**6. Fiscal Management**

- 6.1 Fiscal Management of the Energy Council funds shall be conducted under the purview of the designated Treasurer as prescribed by Government Code section 6500 et seq. as those sections exist and as they may be amended from time to time. The Authority may elect to manage funds utilizing either public or private institutions, in accordance with state law, the Joint Powers Agreement creating the Authority and Authority policy where appropriate.
- 6.2 During the fiscal year regular reports shall be made to the Authority and the Energy Council regarding the status of revenues and expenditures with respect to the adopted budget.

**7. Facilities**

- 7.1 Facilities required for administration of the Authority and the Energy Council shall be provided by shared use, the cost of which shall be apportioned between the parties on the basis of staffing allocations. The existing Authority administrative offices at 1537 Webster Street in Oakland, California shall be shared by both parties. Any future decision to relocate offices to another location shall be by agreement between the

Authority and Energy Council. The Authority and the Energy Council may independently own, lease or otherwise acquire interests in properties at any other locations, for any purpose related to carrying out their respective programs.

**8. Roles and Responsibilities**

8.1 Roles and responsibilities of the Authority and the Energy Council are generally set forth by the Joint Powers Agreement establishing the Authority and by the Joint Powers Agreement establishing the Energy Council. It is agreed by the parties that these areas of responsibility are as follows:

8.1.1 The Authority shall generally be responsible for preparing, adopting, revising, amending, administering, implementing, and enforcing the Alameda County Integrated Waste Management Plan and the Alameda County Hazardous Waste Management Plan and such other projects as the Authority may pursue through its enabling Joint Powers Agreement. Further, the Authority shall be responsible for personnel management, budgeting and other administrative functions required for joint operation with the Energy Council.

8.1.2 The Energy Council shall be generally responsible for integrated energy resource planning which promotes use of sustainable, cleaner and affordable energy resources as more specifically set forth in section 2 of the joint powers agreement creating the Energy Council.

**9. Liability and Insurance**

9.1 Neither the Authority nor the Energy Council shall be held liable for actions by the other, and each shall hold the other harmless for liability arising through action by either party. Each party shall maintain appropriate policies of liability insurance and errors and omissions insurance for officials of both organizations and employees of the Authority.

**10. Modification of Agreement**

10.1 This agreement may be modified at any time with the approval of both parties, subject to the following conditions.

10.1.1 Modification of the Agreement shall be effected through resolution of both the Authority and Energy Council.

10.1.2 Modification of this Agreement shall be accomplished in a manner which does not adversely impact upon programs currently in process, and shall not result in a duplication of services or less efficient use of resources.

**11. Termination of Agreement** Termination of this Agreement may be initiated at any time by resolution of either the Authority or Energy Council, subject to the following conditions.

11.1 Termination of this Agreement shall be accomplished in a manner which does not adversely impact upon programs currently in process, and shall not result in a duplication of services or less efficient use of resources.

- 11.2 A resolution of termination by either party shall initiate a transition period of a minimum of six months, during which any existing joint programs of the Authority and Energy Council shall be brought to completion, or modified in a manner as to facilitate their completion after the transition period is over. With the concurrence of both parties, the transition period may be shortened, subject to a finding by each party that there will be no significant adverse impact to programs in process.
- 11.3 In the event of termination of this agreement, the liquid assets of the Authority and the Energy Council will be divided between the two parties, in accordance with their respective trust funds. Any other assets shall be distributed on the basis of trust fund ownership, and any shared assets shall be divided by agreement between the parties, generally in proportion to the respective contributions of the parties to the asset to be divided.

**[Signature Block]**