

JOINT POWERS AGREEMENT

creating

ABAG POWER

The public entities listed in Appendix A (Members) entered into this Joint Powers Agreement (Agreement) creating ABAG Publicly Owned Energy Resources (ABAG POWER). All Members are public entities organized and operating under the laws of the State of California and each is a public agency as defined in California Government Code Section 6500.

RECITALS

- A. Government Code Sections 6500-6515, permitting two or more local public entities by agreement to jointly exercise any power common to them, authorizes the Members to enter into this Agreement.
- B. Public entities consume energy in the form of natural gas and/or electricity and use telecommunications services in the performance of their essential governmental functions.
- C. Federal and State agencies responsible for the regulation of the natural gas, electric and telecommunications industries have determined that deregulation of these industries is in the public interest.
- D. Public entities have the opportunity to secure energy supplies and related services, manage energy consumption, obtain telecommunications services, manage the use of telecommunications services and determine conditions under which the private sector accesses and uses, in a cooperative and coordinated manner, public resources and infrastructure used in the delivery of such energy and services.
- E. The Association of Bay Area Governments (ABAG), at its sole expense, has created and implemented a natural gas aggregation to purchase natural gas and related services on behalf of the program participants and has formulated, a program to purchase electricity through direct access and procure related services on behalf of public entities in the Pacific Gas & Electric Company's (PG&E) service area.

- F. The formation of ABAG POWER enables the Members to take advantage of the opportunities described in paragraph D in such manner and at such time as the Members may decide.
- G. The governing board of each Member has determined that it is in the Member's best interest and in the public interest that this Agreement be executed and that it is participating as a Member of ABAG POWER.

AGREEMENT

1. Formation of ABAG POWER. Pursuant to Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) (as amended from time to time, the JPA Law), the Members hereby create a separate joint powers agency which is named ABAG POWER.
2. Parties to Agreement. Each Member certifies that it intends to, and does, contract with every other Member which is a signatory to this Agreement and, in addition, with such other Member as may later be added as Members under Section 16. Each Member also certifies that the deletion of any Member from this Agreement does not affect this Agreement nor each remaining Member's intent to contract with the other Members then remaining.
3. Purpose. ABAG POWER will acquire, for use by its Members, energy including, but not limited to, natural gas and electricity, and of telecommunications services, and such other services and goods as may be necessary or convenient to optimize costs savings and to manage the use or the supply of energy or telecommunications services.
4. Membership. The following entities, or types of entities, are eligible for membership in ABAG POWER :
 - (a) ABAG,
 - (b) members of ABAG, and
 - (c) any other public entity so long as such public entity is a cooperating member of ABAG at the time it joins ABAG POWER.
5. Limitation. Except as otherwise authorized or permitted by the JPA Law and for purposes of, and to the extent required by Government Code Section 6509, ABAG POWER is subject to the restrictions upon the manner of exercising the powers of the Member specified in the Bylaws.
6. Powers. ABAG POWER is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement referred to in Section 3 including, but not limited to, each of the following:

- (a) Make and enter into contracts;
- (b) Incur debts, liabilities and obligations; provided that no debt, liability or obligation of ABAG POWER is a debt, liability or obligation of any Member except as separately agreed to by a Member agreeing to be so obligated;
- (c) Acquire, hold, construct, manage, maintain, sell or otherwise dispose of real and personal property by appropriate means, excepting only eminent domain;
- (d) Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- (e) Sue and be sued in its own name;
- (f) Employ agents and employees;
- (g) Lease real or personal property as lessee and as lessor;
- (h) Receive, collect, invest and disburse moneys;
- (i) Issue revenue bonds or other forms of indebtedness, as provided by law;
- (j) Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;
- (k) Assign, delegate or contract with a Member or third party to perform any of the duties of the Board, including, but not limited to, acting as administrator for ABAG POWER; and
- (l) Exercise all other powers necessary and proper to carry out the provisions of this Agreement.

These powers will be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

7. Appointment of Administrating Member.

- (a) ABAG is hereby appointed by the Members to execute the provisions of this Agreement and implement programs undertaken by ABAG POWER. The Members acknowledge that this designation may cause potential conflicts of interest to arise and waive any liability on the part of ABAG arising out of any such conflict of interest. ABAG may not be removed as the administrating Member except by reason of its fraud, gross negligence or gross mismanagement or by a vote of two-thirds (2/3) of the authorized directors of the Board.
- (b) ABAG POWER will compensate ABAG for services rendered.

8. Board of Directors.

- (a) Directors and Alternates. The Board is comprised of one director and, in a director's absence, an alternate director from each member. Each Member will appoint one director and one alternate. A director and/or alternate director may be, but is not required to be, an elected official of the Member.
- (b) Term. Directors serve a term of five (5) years unless removed earlier by the appointing Member. Directors may serve any number of terms.
- (c) Compensation. Directors and alternate directors are not entitled to compensation. The Board may authorize reimbursement of expenses incurred by directors or alternate directors.
- (d) Delegation of Powers. The Board is, pursuant to Section 9(b), required to delegate certain powers to specified committees and may delegate other powers to committees but may not delegate the power to dismiss ABAG or amend the Bylaws.

9. Committees. All directors are eligible for appointment to a committee.

- (a) Executive Committee. The Board may create an Executive Committee as set forth in the Bylaws.
- (b) Program Committees. The Board hereby delegates the power to oversee implementation of a program to a Program Committee as set forth in the Bylaws, provided each such director represents a Member which is participating in the Program.
- (c) Other Committees. The Board may create other committees as set forth in the Bylaws.

10. Officers and Employees.

- (a) The officers of ABAG POWER are the Chair, Vice-Chair, President, Chief Financial Officer/Treasurer and Secretary.
- (b) The Chair and Vice-Chair are directors elected or appointed by the Board at its first meeting. The term of office for Chair and Vice-Chair is one year beginning January 1. The President, Secretary and Chief Financial Officer/Treasurer serve as set forth in the Bylaws. The duties of the officers are described in the Bylaws. The Chair and Vice Chair assume their office upon election. The President, Chief Financial Officer/Treasurer and Secretary assume the duties of their offices upon formation of ABAG POWER. If either the Chair or Vice-Chair ceases to be a director, the resulting vacancy will be filled at the next meeting of the Board.

- (c) The Chair and Vice-Chair are not entitled to compensation. The Board may authorize reimbursement of expenses incurred by officers.
 - (d) The Board may create such other offices and appoint individuals to such offices as it considers either necessary or convenient to carry out the purposes of this Agreement.
- 11. Limitation on Liability of Members for Debts and Obligations of ABAG POWER. Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of ABAG POWER do not constitute debts, liabilities, or obligations of any party to this Agreement. A Member may separately contract for or assume responsibility for specific debts, liabilities, or obligations of ABAG POWER.
- 12. Fiscal Year. The first fiscal year of ABAG POWER is the period from the date of this Agreement through December 31, 1998. Each subsequent fiscal year of ABAG POWER ends on December 31.
- 13. Budget. The Board may adopt, at its sole discretion, an annual or multi-year budget not later than sixty (60) days before the beginning of a fiscal year.
- 14. Annual Audits and Audit Reports. The Chief Financial Officer/Treasurer will cause an annual financial audit to be made by an independent certified public accountant with respect to all ABAG POWER receipts, disbursements, other transactions and entries into the books. A report of the financial audit will be filed as a public record with each Member. The audit will be filed no later than required by State law. ABAG POWER will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.
- 15. Establishment and Administration of Funds.
 - (a) ABAG POWER is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the California Government Code.
 - (b) The funds will be accounted for on a full accrual basis.
 - (c) The Chief Financial Officer/Treasurer will receive, invest, and disburse funds only in accordance with procedures established by the Board and in conformity with applicable law. The Chief Financial Officer/Treasurer will procure a fidelity bond.
- 16. New Members. For the purpose of this section only, all Members admitted after January 1, 1999 are New Members.

- (a) A public entity may be admitted as a New Member only upon a two-thirds (2/3) vote of the Board and upon complying with all other requirements established by the Board and the Bylaws.
- (b) Each applicant for membership as a New Member must pay all fees and expenses, if any, set by the Board.
17. Withdrawal. Members may withdraw in accordance with conditions set forth in the Bylaws provided that no Member may withdraw if such withdrawal would adversely affect a bond or other indebtedness issued by ABAG POWER, except withdrawal under such circumstances may be effected upon a two-thirds (2/3) vote of the Board.
18. Expulsion/Suspension. ABAG POWER may expel or suspend a Member by a two-thirds (2/3) vote of the Board for a breach of this Agreement or the Bylaws determined by the Board to be a material breach. The procedures for hearing and notice of expulsion of a Member are provided in the Bylaws.
19. Termination and Distribution.
- (a) This Agreement continues until terminated. However, it cannot be terminated until such time as all principal of and interest on bonds and other forms of indebtedness issued by ABAG POWER are paid in full. Thereafter, this Agreement may be terminated by the written consent of two-thirds (2/3) of the Members; provided, however, that this Agreement and ABAG POWER continue to exist after termination for the purpose of disposing of all claims, distribution or assets and all other functions necessary to conclude the obligations and affairs of ABAG POWER.
- (b) After completion of ABAG POWER's purposes, any surplus money on deposit in any fund or account of ABAG POWER will be returned as required by law. The Board is vested with all powers of ABAG POWER for the purpose of concluding and dissolving the business affairs of ABAG POWER.
20. Notices. Notice to each Member under this Agreement is sufficient if mailed to the Member and separately to the Member's Director to their respective addresses on file with ABAG POWER.
21. Prohibition Against Assignment. No Member may assign a right, claim, or interest it may have under this Agreement. No creditor, assignee or third party beneficiary of a Member has a right, claim or title to any part, share, interest, fund or asset of ABAG POWER. However, nothing in this section prevents ABAG POWER from assigning any interest or right it may have under this Agreement to a third party.
22. Amendments. This Agreement may be amended by an affirmative vote of the governing bodies of [three-fourths (3/4)] of the Members acting through their governing bodies. A proposed amendment must be submitted to each Member at least thirty (30) days in advance of the date when the Member considers it. An amendment is to be effective

immediately unless otherwise designated. Appendix A to the Agreement may be amended to correctly list current Members without separate action by the Members or the Board.

23. Severability. If a portion, term, condition or provision of this Agreement is determined by a court to be illegal or in conflict with a law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions is not affected.
24. Liability of ABAG POWER. Subject to limitations thereon contained in any trust agreement or other documents pursuant to which financing of ABAG POWER are implemented, funds of ABAG POWER may be used to defend, indemnify, and hold harmless ABAG POWER, any Member, any Director or alternate, and any employee or officer of ABAG POWER for their actions taken within the scope of their duties while acting on behalf of ABAG POWER.
25. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California.
26. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes but one and the same instrument.

27. Effective Date. This Agreement becomes effective and ABAG POWER exists as a separate public entity when the sum of the electric usage for all accounts committed by all Members under all Direct Access Electric Aggregation Agreements between the Member and ABAG equals or exceeds three hundred seventy thousand (370,000) mWh in a one year period.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

Date: _____

By: _____

APPROVED AS TO LEGAL FORM

Legal Counsel

Attest:
