

# **Joint Exercise of Powers Agreement**

between  
County of Alameda  
&  
Alameda County Lead Abatement Program  
Joint Powers Authority

Alameda County  
Lead Poisoning Prevention Program

signed on  
May 19, 1992

JOINT EXERCISE OF POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT (the "Agreement"), dated May 19, 1992, is by and between the City of Alameda, the City of Berkeley, the City of Oakland, and the County of Alameda, (the "Members"), each duly organized and existing under the laws of the State of California:

W I T N E S S E T H:

WHEREAS, the Alameda County Board of Supervisors, on December 10, 1991, adopted Resolution No. R-91-999 establishing County Service Area LA-1991-1 (the "CSA") including the City of Alameda, the City of Berkeley and the City of Oakland and the unincorporated area of Alameda County for the purpose of funding a program to abate environmental lead from residential property; and

WHEREAS, the Members wish to form a joint powers authority under the Joint Exercise of Powers Law of the State of California (constituting Chapter 5 of Division 7 of Title I of the California Government Code) for the purpose of establishing an entity which will supervise and fund the operations of the Alameda County Lead Abatement Program;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Members do hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meanings herein specified.

"Act" means Articles 1 through 4 (commencing with section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, as amended from time to time.

"Agreement" means this Agreement.

"Alternate" means a person designated by a Director to vote and otherwise represent that Director's jurisdiction in the absence of the Director.

"Authority" means the Alameda County Lead Abatement Program Joint Powers Authority established pursuant to this Agreement.

"Board" means the Board of Directors referred to in Section 2.06, which shall be the governing body of the Authority.

"Community Representative" means the at-large, non-voting member of the Joint Powers Authority, selected by the Board to speak as an ombudsperson for members of the communities served by the Program.

"County" means Alameda County, California.

"CSA" means County Service Area LA-1991-1 which includes the City of Alameda, the City of Berkeley, the City of Oakland, and the unincorporated area of Alameda County.

"Directors" means the representatives of the Members appointed to the Board pursuant to Section 2.06.

"Fiscal Year" means the period from July 1st to and including the following June 30th.

"Members" means the City of Alameda, the City of Berkeley, the City of Oakland, and the County of Alameda and any other City in Alameda County which becomes a Member of the CSA and a party to this Agreement.

"Participating City" means a City which is a Member.

"Program" means the Alameda County Lead Abatement Program.

"Secretary" means the Secretary of the Authority appointed pursuant to Section 3.01.

"Treasurer" means the Treasurer of the Authority appointed pursuant to Section 3.02.

## ARTICLE II

### GENERAL PROVISIONS

Section 2.01. Purpose. This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the Members, and for the other purposes as permitted under the Act and as agreed by one or more of the parties hereto. The purpose of this Agreement is to establish an entity which will supervise and fund the operations of the Alameda County Lead Abatement Program.

Section 2.02. Creation of Authority. Pursuant to the Act, there is hereby created a public entity to be known as the "Alameda County Lead Abatement Program Joint Powers Authority." The Authority shall be a public entity separate and apart from the Members, and shall administer this Agreement.

Section 2.03. Membership. Membership of the Authority shall be comprised of the County of Alameda and each Participating City. Unincorporated areas of the County shall be represented by the County.

Section 2.04. New Members. Any City in Alameda County which joins the CSA may become a party to this Agreement. Any City requesting membership in the Authority must present to the Authority a resolution approving this Agreement. The terms upon which the applying City will become a Member will be in keeping with the terms of this Agreement.

Section 2.05. Contribution. Revenues for the Alameda County Lead Abatement Program shall consist of assessments set by the Alameda County Board of Supervisors and collected from the owners of pre-1978 dwellings in the CSA.

Section 2.06. Board. The Authority shall be administered by a Board of four voting Directors and one non-voting Community Representative, unless and until changed by amendment of this Agreement. Each of the Members shall designate one representative to serve as a voting Director and these Directors shall select the Community Representative. The Board shall be called the "Board of Directors of the Alameda County Lead Abatement Program." All voting power of the Authority shall reside in the Board.

Section 2.07. Alternates. Each Director shall designate one Alternate who will have the authority to cast votes and otherwise represent the interests of that Director's jurisdiction at Board meetings.

Section 2.08. Meetings of the Board.

- a) Regular Meetings. The Board shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each year. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be filed with each of the Members.
- b) Special Meetings. Special meetings of the Board may be called in accordance with the provisions of section 54956 of the California Government Code.
- c) Call, Notice, and Conduct of Meetings. All meetings of the Board, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of section 54950 et seq. of the California Government Code.

Section 2.09. Ralph M. Brown Act. Each meeting of the Board, including without limitation, regular, adjourned regular and special meetings shall be called, noticed, held and conducted in accordance with the Ralph M. Brown Act (Section 54950 et seq. of the California Government Code).

Section 2.10. Meeting Compensation. The Board is authorized to fix a reasonable sum to be paid Directors for attendance at Board meetings. Such compensation shall cover mileage and other costs associated with meeting attendance.

Section 2.11. Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to each Member.

Section 2.12. Voting. Each Director's vote on the Authority shall be proportional to the respective property assessment contribution from each Director's Member-jurisdiction. The votes of each Director shall be cast as one block of votes.

Section 2.13. Quorum: Required Votes: Approvals.

- a) A simple majority of the Directors shall constitute a quorum for the transaction of business, provided such Directors represent at least fifty percent of the votes entitled to be cast.
- b) The authorization of actions shall be by a simple majority of votes.

Section 2.14. Bylaws. The Board may adopt, from time to time, such bylaws and other rules and regulations for the conduct of its meetings as necessary for the purposes hereof.

Section 2.15. Progress Reports. The Board shall make semi-annual progress reports either through its Directors or staff to

the city council of each Participating City and to the County Board of Supervisors as long any such jurisdiction is a Member of the Authority and is included in the CSA.

### ARTICLE III

#### OFFICERS, EMPLOYEES AND CONTRACTORS

Section 3.01. Chairperson, Vice Chairperson, Executive Director and Secretary. The Board shall elect a Chairperson and Vice-Chairperson from among the Directors, and shall appoint a Secretary who may, but need not, be a Director. The Board may appoint an Executive Director who may, but need not, be a Director. The officers shall perform the duties normally performed by said officers. The Chairperson or the Executive Director (if an Executive Director is selected from the Board) shall sign all contracts on behalf of the Authority, and shall perform such other duties as may be imposed on the Chairperson or Executive Director by the Board. The Vice-Chairperson shall act, sign contracts and perform all of the Chairperson's duties in the absence of the Chairperson. The Secretary shall countersign all contracts signed by the Chairperson, Executive Director or Vice Chairperson on behalf of the Authority, perform such other duties as may be imposed by the Board and cause a copy of this Agreement to be filed with the Secretary of State of California pursuant to the Act.

Section 3.02. Treasurer. Pursuant to section 6505.5 of the Act, the Treasurer of the County of Alameda is hereby designated as the Treasurer of the Authority and the Auditor of the County of Alameda as the Auditor of the Authority. The Auditor and Treasurer shall be the depository, shall have custody of all the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in sections 6505 and 6505.5 of the Act and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority. In addition, the Auditor of the County of Alameda will either make or contract for an audit of the accounts and records of the Authority at least annually as prescribed by section 6505 of the Government Code.

Section 3.03. Officers in Charge of Records. Funds and Accounts. Pursuant to section 6505.1 of the Act, the Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto, and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 3.04. Legal Advisor. The Board shall have the power to appoint a legal advisor to the Authority who shall perform such duties as may be prescribed by the Board. Such legal advisor may be County Counsel of the County of Alameda.

Section 3.05. Service Providers. The Board shall have the power to contract with the County, Participating Cities and other service providers for the implementation of the Lead Abatement Program.

Section 3.06. Other Employees. The Board shall have the power to appoint and employ such other staff, consultants and independent contractors as may be necessary to fulfill its powers, duties and responsibilities under this Agreement.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of a Member when performing their respective functions shall apply to the Member's officers, agents or employees to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

None of the officers, agents, or employees directly employed by the Board shall be deemed, by reason of their employment by the Board to be employed by a Member or, by reason of their employment by the Board, to be subject to any of the requirements of Members.

Section 3.07. Assistant Officers. The Board may appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Director) as the Board shall from time to time deem appropriate.

#### ARTICLE IV

##### POWERS

Section 4.01. General Powers. The Authority shall exercise in the manner herein provided the powers common to the Members, or as otherwise permitted under the Act, and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.04.

As provided in the Act, the Authority shall be a public entity separate and apart from the Members. The Authority shall have the power to develop policies and programs necessary to implement the Program. The Authority shall develop an annual budget, including levels of assessment rates and expenditures of assessment monies. The budget, rates, and expenditures will be considered for approval by the County Board of Supervisors prior to its setting of annual assessment rates.

Section 4.02. Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any or all of the following:

- (a) to make and enter into contracts;
- (b) to employ agents or employees;
- (c) to sue and be sued in its own name;
- (d) to incur debts, liabilities or obligations provided that no such debt, liability or obligation shall, pursuant to Section 6508.1 of the Act, constitute a debt, liability or obligation of any of the Members, except as otherwise provided pursuant to Section 895.2 of the Act;
- (e) to acquire, construct, manage, maintain, or operate any building, works or improvements;
- (f) to acquire, hold or dispose of property;
- (g) to apply for, accept, receive and disburse grants, loans and other aids from any agency of the United States of America or of the State of California;
- (h) to invest any money in the treasury pursuant to section 6505.5 of the Act that is not required for the immediate necessities of the Authority, as the Authority determines it advisable, in the same manner and upon the same conditions as local agencies, pursuant to section 536012 of the California Government Code;
- (i) to carry out and enforce all the provisions of this Agreement;
- (j) to exercise any and all other powers as may be provided in the Act.

Section 4.03. Proportional Allocation of Funds. The Authority shall allocate funds to provide services in the jurisdiction of each Member in direct proportion to funds received from the jurisdiction of such Member.

Section 4.04. Credit to Members. All accounts or funds created and established pursuant to any instrument or agreement to which the Authority is a party and any interest earned or accrued thereon, shall be allocated in the same manner and in the same proportion as other funds as provided by Section 4.03.

Section 4.05. Organization of Authority. As soon as practicable after the date of execution of this Agreement, the Directors shall give notice (in the manner required by Section 2.04) of the organizational meeting of the Board. At said meeting the Board shall provide for its regular meetings as required by Section 2.04 and elect a Chairperson and Vice-Chairperson, and appoint a Secretary.

## ARTICLE V

### TERM

Section 5.01. Term. This Agreement shall become effective as of the date hereof and shall continue in full force and effect so long as any contributions, or earnings thereof, remain undisposed. Upon entering into this Agreement, each Member commits to

participation in the CSA for the first three years of the Program so long as the assessment for that Member remains at or below ten dollars for each pre-1978 dwelling unit. If, during the first three years of the Program, the Alameda County Board of Supervisors levies an assessment for the CSA above this level, each Member shall have the right to withdraw from the Authority. After the first three years after the date of the creation of the CSA, a Member shall have the right, with or without cause, to withdraw from the CSA and the Authority provided written notification is given by May 31st of the fiscal year at the end of which the withdrawal will become effective.

Section 5.02. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the parties hereto in such manner as shall be agreed upon by the parties; except that pursuant to Section 6512 of the Act, any surplus money on hand shall be returned in proportion to the contributions from the jurisdictions of each Member.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

#### Section 6.01. City Directors.

- a) City of Alameda. The Mayor of the City of Alameda shall appoint the Director and the Alternate for the City of Alameda.
- b) City of Berkeley. The Mayor of the City of Berkeley shall appoint the Director and the Alternate for the City of Berkeley.
- c) City of Oakland. The Director representing the City of Oakland shall be the Chairperson of the Oakland City Council Committee on Health, Human Services and the Family; the alternate Director for the City of Oakland shall be the Director of the Office of Community Development for the City of Oakland, or such other person as the City Manager of Oakland shall designate in writing.
- d) County of Alameda. The Alameda County Board of Supervisors shall select the Director and Alternate for Alameda County.

Section 6.02. Special Withdrawal Provision - City of Alameda. The City of Alameda will withdraw from the Authority if an annual assessment rate of \$10.00 is exceeded in the first three assessment years.

Section 6.03. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to the notice address of each party hereto for legal notices or as otherwise provided by a party hereto in writing to each of the other parties hereto.

Section 6.04. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 6.05. Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 6.06. Law Governing. This Agreement is made in the State of California under the constitution and laws of the State of California, and is to be so construed.

Section 6.07. Amendments. This Agreement may be amended at any time, or from time to time by a unanimous vote of the Directors.

Section 6.08. Enforcement by Authority. The Authority is hereby authorized to take any and all legal or equitable actions, including but not limited to injunctions and specific performance, necessary or permitted by law to enforce this Agreement.

Section 6.09. Indemnification. The Authority shall indemnify and hold harmless each City and the County from and against all liabilities, law suits and costs, including attorney's fees, arising out of the implementation of a lead abatement program except to the extent that such liabilities, law suits and costs arise out of a contract for services between the Authority and a City or the County and arise out of the sole negligence of the City or County.

Section 6.10. Severability. Should any part, term or provision of this Agreement be found by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 6.11. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members, respectively. No Member may assign any right or obligation hereunder without the prior written consent of all Members.

Section 6.12. Execution. This Agreement may be executed by each of the Members in counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, on the day and year first set forth above.

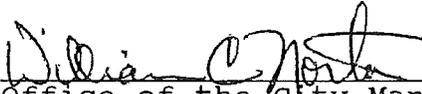
COUNTY OF ALAMEDA

By:   
President, Board of Supervisors

Approved as to form and legality:

By:   
County Counsel

CITY OF ALAMEDA

By:   
Office of the City Manager

Approved as to form and legality:

By:   
City Attorney

CITY OF BERKELEY

By:   
Office of the City Manager

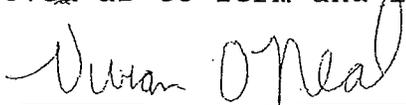
Approved as to form and legality:

By:   
City Attorney

CITY OF OAKLAND

By:   
City Manager

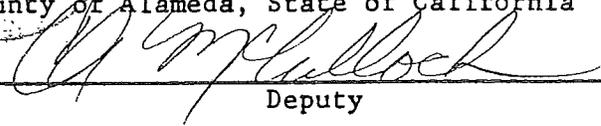
Approved as to form and legality:

By:   
City Attorney

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on MAY 19 1992; and that a copy has been delivered to the President as provided by Government Code Section 25103.  
Dated: JUN 18 1992

WILLIAM MEHRWEIN, CLERK, BOARD OF SUPERVISORS  
County of Alameda, State of California

By

  
Deputy