

RESOLUTION NO. 11-53

A RESOLUTION OF THE CITY OF LANCASTER,
CALIFORNIA, APPROVING A JOINT POWERS AGREEMENT
BETWEEN THE CITY OF LANCASTER AND THE CITY OF
PITTSBURG FOR THE ESTABLISHMENT OF THE HIGH
DESERT POWER AUTHORITY, A JOINT POWERS
AUTHORITY

WHEREAS, the City has the authority under Article 11, Section 9, of the California Constitution, and other applicable law, to establish a municipal utility for natural gas and electric service including from alternative energy sources. Such a utility may develop alternative energy production facilities, purchase energy on the wholesale market, and pass savings on to its customers.

WHEREAS, the City has determined that the most efficient manner of establishing a municipal utility for the purposes described above is the creation of a joint powers authority, between the City of Lancaster and the City of Pittsburg.

WHEREAS, the City Council finds that the public interest, convenience and necessity require the formation of the referenced authority.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, AS FOLLOWS:

Section 1. The City Council hereby approves the "Joint Powers Agreement" attached hereto as Exhibit "A" (hereafter, "Agreement"), and the establishment of the High Desert Power Authority, a Joint Powers Authority ("HDPA") described therein.

Section 2. This resolution shall take effect immediately upon its adoption.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

GERI K. BRYAN, CMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }ss
CITY OF LANCASTER }

CERTIFICATION OF RESOLUTION
CITY OF LANCASTER

I, _____, _____ City of Lancaster, CA, do hereby certify that this is a true and correct copy of the original Resolution No. 11-53, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)

Exhibit "A"

**JOINT POWERS AGREEMENT
BETWEEN
CITY OF LANCASTER AND CITY OF PITTSBURG**

This Agreement ("Agreement") is made and entered into on _____, 2011, by and between the City of Lancaster, a charter City ("Lancaster") and the City of Pittsburg, a general law City ("Pittsburg").

The parties hereto agree as follows:

Section 1. Recitals. This Agreement is made and entered into with respect to the following facts:

- (a) PITTSBURG and LANCASTER have the authority to establish, own and operate a municipal gas and electric utility under California Constitution, Article 11, section 9, and other applicable law.
- (b) PITTSBURG and LANCASTER desire and intend for this Agreement to create a joint powers authority, as a separate legal entity, which in turn will contract with a qualified person or persons, entity or entities to provide operational support to the municipal utility.
- (c) PITTSBURG and LANCASTER have determined by their respective resolutions that the public interest, convenience and necessity require the formation of a municipal utility through a joint powers authority, and execution and implementation of this Agreement.

Section 2. Creation of Entity. There is hereby created a Joint Powers Authority, to be known as the "High Desert Power Authority" (hereafter "HDPA"). It is the intention of the parties to this Agreement to, and they do hereby, create a legal entity, separate from the parties to this Agreement, which entity shall be responsible for the administration and implementation of this Agreement.

Section 3. Purpose. The purpose of the HDPA shall be to promote the development of various transmission and distribution networks for electricity generated by renewable energy resources as defined under the Public Resources Code and the Public Utilities Code for the benefit of the residents, customers, business and property owners in the cities of Pittsburg and Lancaster. The public interest, convenience and necessity require that the municipal utility be established through a joint powers authority established under this Agreement. The HDPA is authorized to perform all the functions of a municipal utility allowed by law.

Section 4. Board of Directors. The HDPA shall be governed by a Board of Directors (Board), which shall consist of five (5) members selected from the City Councils of PITTSBURG and LANCASTER as follows:

1. Both PITTSBURG and LANCASTER operate on a fiscal year commencing on July 1 and ending on June 30.

2. For fiscal years commencing on odd numbered years, LANCASTER shall appoint three (3) members to the Board of Directors and PITTSBURG shall appoint two (2) members.
3. For fiscal years commencing on even numbered years, PITTSBURG shall appoint three (3) members to the Board of Directors and LANCASTER shall appoint two (2) members.
4. In the event that during any fiscal year an appointed member from either PITTSBURG or LANCASTER is either unable or no longer eligible to serve, then a replacement shall be appointed by the appropriate City with thirty (30) days prior written notice that such individual is no longer able or eligible to serve.

Each Director shall serve at the will of the Mayor which appointed that director.

Section 5. Staff to the HDPA. The Board shall appoint an Executive Director and a Board secretary, each of whom shall serve at the pleasure of the Board. The Board shall have the discretion to retain legal counsel and such other consultants as the Board deems necessary. The Executive Director may retain additional staff for the HDPA.

Section 6. Accounting: Audit. The Board shall take all steps reasonably required and necessary to provide for strict accountability as to all funds coming into possession of the HDPA and shall provide from time to time, public reports of all receipts and disbursements. Upon the effective date of the HDPA, the Treasurer of PITTSBURG shall perform all duties of a treasurer, as outlined in Government Code section 6505.5; however, the Board shall have the discretion to transfer this function to a certified public accountant, consistent with Section 6505.5. The auditor or controller of the HDPA shall be the same auditor or controller as used by the PITTSBURG. Such audit reports shall be filed as is required pursuant to Government Code sections 6500, *et seq.*

Section 7. Common Powers. Each of the parties to this Agreement has the power to establish, own and/or operate or cause to be operated, a municipal utility. The contracting parties designated for purposes of Government Code section 6509 is the LANCASTER.

Section 8. Rights and Duties of HDPA. The HDPA created hereby shall have all of the rights, duties and powers available to it pursuant to applicable law including, without limitation, Government Code sections 6500, *et seq.* Those rights, duties and powers shall include, for example only and not by way of limitation:

- (a) the right to sue and be sued in its own name;
- (b) the right to issue revenue bonds or other evidences of indebtedness, including, at the option of the Board, bonds bearing interest, to pay the cost of any public capital improvement, working capital, or liability or other insurance program; provided, however, that any such bonds or other evidences of indebtedness so issued shall be deemed to be exclusively the obligation of the HDPA and shall not constitute a debt, liability or obligation of any of the parties to this Agreement

- (c) the right to enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient or desirable to carry out any power authorized by law;
- (d) set any terms and conditions on any purchase or sale pursuant to law as the HDPA deems by resolution to be necessary, appropriate and in the public interest, in furtherance of the purposes of this Agreement;
- (e) the right to designate by resolution a service area or areas for service by the HDPA, within or outside the territorial boundaries of PITTSBURG and/or LANCASTER, and to amend, revise or terminate service in such areas;
- (f) the right to establish, by resolution and on such terms as the Board deems appropriate, advisory boards to review and advise concerning rate tariffs, quality of service, and rules and regulations of operation, particularly in circumstances where the HDPA delivers service outside the territorial boundaries of PITTSBURG or LANCASTER;
- (g) the right to distribute revenues from HDPA activities to PITTSBURG and/or LANCASTER, for any lawful purpose, such as without limitation reimbursement for administrative expenses and to pay the cost of any public capital improvement, in the discretion of the Board;
- (h) the right to engage in business retention and development activities in areas served by the HDPA, including but not limited to the acquisition of real property, either by purchase, assignment or gift currently or acquired in the future by either PITTSBURG or LANCASTER;
- (i) the right to implement demand management and energy conservation and efficiency programs;
- (j) the right to enter into public and private contracts for the provision of gas and electric service; provided, however, that if the HDPA is for any reason unable to sell and deliver electric service to end-use consumers, it shall be authorized and empowered to enter into agreements with PITTSBURG and/or LANCASTER or any other legal entity for PITTSBURG and/or LANCASTER and/or such entity to purchase gas and electricity from the HDPA and in turn, sell and deliver to end-use consumers; and
- (k) the rights, duties and powers otherwise expressly set forth for a joint powers authority and/or municipal utility, together with those implied powers necessary to carry out powers expressly granted.

Section 9. Debts of HDPA. The debts, liabilities and obligations of the HDPA shall not constitute debts, liabilities or obligations of the parties to this Agreement.

Section 10. Actions. Actions by the Board shall be taken upon the majority vote of the Board, except where otherwise allowed or provided by law, resolution, or this Agreement. However, a four-fifths vote of the Board shall be required for any agreements, transactions or other matters in excess of \$100,000 and any expenditures or financial commitments which are not in the Board-approved budget.

Section 11. Applicability of Laws. The HDPA and its Board shall conduct affairs of the HDPA in compliance with the provisions of the Ralph M. Brown Act and other applicable laws.

Section 12. Loans. The HDPA Board, in its discretion, may by resolution authorize the receipt of loans from or the granting of loans to the LANCASTER and/or PITTSBURG, on such mutually agreed terms and conditions as it deems appropriate.

Section 13. Term. The term of this Agreement shall be for a period of twenty (20) years, and shall thereafter renew for successive additional one-year terms until terminated by the parties. This Agreement may be terminated by the joint mutual agreement of the parties hereto expressed in a written agreement which states the date of termination of this Agreement. In the event mutual agreement cannot be reached by parties hereto, this agreement may be terminated by either party upon 60 day written notice.

Section 14. Effect of Termination. Unless otherwise agreed to in writing by the parties hereto, upon termination of this Agreement, any remaining assets of the HDPA after payment of outstanding obligations shall be divided between the parties hereto on a pro rata basis in proportion to the financial contribution(s) made by each party as indicated in the accounting prepared and maintained pursuant to Section 6 of this Agreement.

Section 15. Binding Effect. The provisions of this Agreement shall be binding upon the parties hereto and their respective successors in interest.

Section 16. Section Headings. The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents of the sections to which they relate.

Section 17. Severability. This Agreement shall be deemed severable. If any provision or part hereof is judicially declared invalid, then the remaining provisions shall remain valid, and shall be interpreted in a manner which most gives effect to the intent and purposes of this Agreement.

Section 18. Modification. This Agreement shall not be modified except by written agreement of the parties hereto.

Section 19. Bylaws. The Board may adopt such bylaws as the Board deems fit.

Section 20. Effective Date. This Agreement shall take effect as of _____, 2011.

WHEREFORE, the parties have executed this Agreement as follows:

CITY OF PITTSBURG

By: _____
Will Casey, Mayor

ATTEST:

Alice Evenson, City Clerk

APPROVED AS TO FORM:

Ruthann Ziegler
Pittsburg City Attorney

CITY OF LANCASTER

By: _____
R. Rex Parris, Mayor

ATTEST:

Geri Bryan, City Clerk

APPROVED AS TO FORM:

David McEwen
Lancaster City Attorney

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into this _____ day of _____, 2011, by and between the City of Lancaster, a charter city and the City of Pittsburg, a general law city.

Purpose: To outline the main deal points for the formation of a Joint Powers Authority – known as the High Desert Power Authority (HDPa) for the development, construction, and possible ownership, operation and maintenance of electric transmission lines for renewable energy in and around the City of Lancaster, California.

The Parties Hereby Agree As Follows:

City of Lancaster (Lancaster) and City of Pittsburg (Pittsburg) are engaged in promoting renewable energy development within their respective jurisdictions. The parties share a commitment to procuring and promoting renewable energy in a cost effective manner consistent with the requirements of AB 32 and the most recently adopted renewable portfolio standards (SBX1-2).

Lancaster and Pittsburg have the authority to establish, own, and operate municipal gas and electric utilities under California Constitution, Article 11, Section 9, and other applicable law.

Lancaster and Pittsburg agree to form a Joint Powers Authority (HDPa) consistent with the laws of the State of California. The HDPa can enter into agreements, contracts, and other necessary arrangements to promote the development of transmission lines in support of renewable energy projects in and around Lancaster. The HDPa can enter into agreements, contracts, and other necessary arrangements to promote the development of transmission lines in support of renewable energy projects in and around Pittsburg, and in such other projects as the HDPa may deem beneficial and in the public interest.

The HDPa may assume ownership and operational control of the transmission lines installed if it sees fit, and may derive revenues for its role as a facilitator/owner/operator. These revenues will be divided between the two parties based on the location of the facilities developed and equity placed into the project. For facilities located within or adjacent to Lancaster, 90% of revenues from said project will accrue to Lancaster and 10% of revenues to Pittsburg. For facilities located within or adjacent to Pittsburg 90% of revenues from said project will accrue to Pittsburg and 10% to Lancaster. Revenue allocations may be modified by the Board through a four-fifths vote.

The HDPa may enter into contracts with anyone who, in its sole discretion, identifies as the best qualified, lowest responsible bidder, and experienced operator pursuant to the specifications of the technology needed. A party to the HDPa or the HDPa itself may serve as the lead agency for all entitlements for proposed projects including, but not limited to, CEQA.

The HDPa will be in effect until dissolved by the parties.

The HDP Board will be made up of five members, selected by each City from their City Councils. Majority control would rotate annually as follows:

- Odd Numbered Years: 3 Lancaster seats, 2 Pittsburg seats; and
- Even Numbered Years: 3 Pittsburg seats, 2 Lancaster seats.

HDP Finances:

Board may, by simple majority, enter into agreements, contracts, etc.; except, agreements or contracts in excess of \$100,000.00 in aggregate would require a four-fifths vote.

HDP to be validated through a validation action filed in a court of appropriate jurisdiction.

Other Operating Issues Not Covered By the HDP JPA:

- Staff Reimbursement - Pittsburg/Lancaster staff would provide support to HDP for initial 36 months (three years) to assist in the initial project development. HDP will enter into a reimbursement agreement with Pittsburg and Lancaster for all associated Pittsburg and Lancaster staff time, billed at its fully burdened hourly rate, as approved. After this initial period, HDP Board will have the right to either extend the reimbursement agreement; designate support staff from one or both cities with appropriate reimbursement arrangements; or enter into a contract for direct professional staff support.
- Legal Counsel to the HDP - Pittsburg to provide initial counsel until HDP appoints its own.
- Accounting Services - Until project agreement entered, provided by each party.
- Risk Management - Until project agreements entered, provided by each party.
- Meeting Schedule - Monthly Board meeting commencing one month after HDP approval. Web meetings scheduled whenever possible to reduce travel costs, but the Board should meet as a whole, in person, at least twice a year.
- HDP will establish web presence and email account.
- Mailing Address/Phone Number - Primary address will be Lancaster City Hall with copies of all correspondence to City of Pittsburg, care of the Pittsburg Power Company. The main phone number for HDP to be provided by Lancaster; secondary line provided by Pittsburg.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representative as of the date first written above.

CITY OF PITTSBURG

By: _____
Will Casey, Mayor

ATTEST:

Alice Evenson, City Clerk

APPROVED AS TO FORM:

Ruthann Ziegler
Pittsburg City Attorney

CITY OF LANCASTER

By: _____
R. Rex Parris, Mayor

ATTEST:

Geri Bryan, City Clerk

APPROVED AS TO FORM:

David McEwen
Lancaster City Attorney