

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

RESOLUTION NO. RES-15-0043

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3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH CONSENTING TO INCLUSION OF
5 CERTAIN PROPERTIES WITHIN THE JURISDICTION IN
6 THE CALIFORNIA HERO PROGRAM TO FINANCE
7 DISTRIBUTED GENERATION RENEWABLE ENERGY
8 SOURCES, ENERGY AND WATER EFFICIENCY
9 IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING
10 INFRASTRUCTURE AND APPROVING THE AMENDMENT
11 TO A CERTAIN JOINT POWERS AGREEMENT RELATED
12 THERETO
13

14 WHEREAS, the Western Riverside Council of Governments ("Authority") is
15 a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title
16 1 of the Government Code of the State of California (Section 6500 and following) (the
17 "Act") and the Joint Power Agreement entered into on April 1, 1991, as amended from
18 time to time (the "Authority JPA"); and

19 WHEREAS, Authority has established the California HERO Program to
20 provide for the financing of renewable energy distributed generation sources, energy and
21 water efficiency improvements and electric vehicle charging infrastructure (the
22 "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being
23 Division 7 of the California State and Highways Code ("Chapter 29") within counties and
24 cities throughout the State of California that elect to participate in such program; and

25 WHEREAS, the City of Long Beach (the "City") is committed to
26 development of renewable energy sources and energy efficiency improvements,
27 reduction of greenhouse gases, protection of our environment, and reversal of climate
28 change; and

1 WHEREAS, in Chapter 29, the Legislature has authorized cities and
2 counties to assist property owners in financing the cost of installing Improvements
3 through a voluntary contractual assessment program; and

4 WHEREAS, installation of such Improvements by property owners within
5 the jurisdictional boundaries of the counties and cities that are participating in the
6 California HERO Program would promote the purposes cited above; and

7 WHEREAS, the City wishes to provide innovative solutions to its property
8 owners to achieve energy and water efficiency and independence, and in doing so
9 cooperate with Authority in order to efficiently and economically assist property owners
10 the City in financing such Improvements; and

11 WHEREAS, Authority has established the California HERO Program, which
12 is such a voluntary contractual assessment program, as permitted by the Act, the
13 Authority JPA, originally made and entered into April 1, 1991, as amended to date, and
14 the Amendment to Joint Powers Agreement Adding the City of Long Beach as an
15 Associate Member of the Western Riverside Council of Governments to Permit the
16 Provision of Property Assessed Clean Energy (PACE) Program Services within the City
17 (the "JPA Amendment"), by and between Authority and the City, a copy of which is
18 attached as Exhibit "A" hereto, to assist property owners within the jurisdiction of the City
19 in financing the cost of installing Improvements; and

20 WHEREAS, the City will not be responsible for the conduct of any
21 assessment proceedings; the levy and collection of assessments or any required
22 remedial action in the case of delinquencies in the payment of any assessments or the
23 issuance, sale or administration of any bonds issued in connection with the California
24 HERO Program;

25 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
26 follows:

27 Section 1. This City Council finds and declares that large multifamily and
28 non-residential properties ("Participating Parcel") in the City will be benefited by the

1 availability of the California HERO Program to finance the installation of the
2 Improvements. Participating Parcel consists of commercial, industrial, agriculture, and
3 large multifamily properties containing five (5) or more units.

4 Section 2. This City Council consents to inclusion in the California HERO
5 Program, with phased implementation as described in Section 6 of the JPA Amendment
6 attached hereto and included herein as Exhibit "A", of all of the Participating Parcel in the
7 jurisdictional boundaries of the City and to the Improvements, upon the request by and
8 voluntary agreement of owners of such properties, in compliance with the laws, rules and
9 regulations applicable to such program; and to the assumption of jurisdiction thereover by
10 the Authority for the purposes thereof.

11 Section 3. The consent of this City Council constitutes assent to the
12 assumption of jurisdiction by Authority for all purposes of the California HERO Program
13 and authorized Authority, upon satisfaction of the condition imposed in this resolution, to
14 take each and every step required for or suitable for financing the Improvements,
15 including the levying, collection and enforcement of the contractual assessments to
16 finance the Improvements and the issuance and enforcement of bonds to represent such
17 contractual assessments.

18 Section 4. This City Council hereby approves the JPA Amendment,
19 attached as Exhibit "A", and authorizes the execution thereof by appropriate City officials.

20 Section 5. City staff is authorized and directed to coordinate with
21 Authority staff to facilitate operation of the California HERO Program within the City.

22 Section 6. The City Clerk is directed to send a certified copy of this
23 resolution to the Secretary of the Authority Executive Committee.

24 Section 7. This resolution shall take effect immediately upon its adoption
25 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of April 7, 2015

by the following vote:

Ayes: Councilmembers: Gonzalez, Price, Mungo, Andrews,
Uranga, Austin, Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: Lowenthal.

Robnam Davis for Larry H. Cabrera
City Clerk

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EXHIBIT "A"

Amendment to the Joint Powers Agreement

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AMENDMENT TO THE JOINT POWERS AGREEMENT
ADDING CITY OF LONG BEACH AS AN ASSOCIATE MEMBER OF THE
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PROPERTY ASSESSED CLEAN ENERGY (PACE)
PROGRAM SERVICES WITH SUCH CITY

This Amendment to the Joint Powers Agreement ("JPA Amendment") is made and entered into on the ____ day of _____, 2015, by the City of Long Beach ("City") and the Western Riverside Council of Governments ("Authority") (collectively the "Parties").

RECITALS

WHEREAS, Authority is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Joint Exercise of Powers Act") and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the "Authority JPA"); and

WHEREAS, as of October 1, 2012, Authority had 18 member entities (the "Regular Members"); and

WHEREAS, Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") to authorize cities, counties, and cities and counties to establish voluntary contractual assessment programs, commonly referred to as a Property Assessed Clean Energy ("PACE") program, to fund various renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure (the "Improvements") that are permanently fixed to residential, commercial, industrial, agricultural or other real property; and

WHEREAS, Authority intends to establish a PACE program to be known as the "California HERO Program" pursuant to Chapter 29 as now enacted or as such legislation may be amended hereafter, which will authorize the implementation of a PACE financing program for cities and City throughout the state; and

1 WHEREAS, Authority intends to establish within the California HERO
2 Program separate programs (a) to fund Improvements that are permanently fixed only to
3 residential properties (the "Residential Program") or (b) to fund Improvements that are
4 permanently fixed only to commercial, industrial, agricultural or other real property (the
5 "Commercial Program"); and

6 WHEREAS, City desires to allow owners of property within its jurisdiction to
7 participate in the California HERO Program and to allow Authority to conduct proceedings
8 under Chapter 29 to finance Improvements to be installed on such properties; and

9 WHEREAS, this JPA Amendment will permit City to become an associate
10 member of Authority and to participate in California HERO Program for the purpose of
11 facilitating the implementation of such program within the jurisdiction of City; and

12 WHEREAS, pursuant to Government Code sections 6500 et seq., the Parties
13 are approving this JPA Agreement to allow for the provision of PACE services, including
14 the operation of a PACE financing program, within the unincorporated territory of City; and

15 WHEREAS, the JPA Amendment sets forth the rights, obligations and duties
16 of City and Authority with respect to the implementation of the California HERO Program
17 within the unincorporated territory of City;

18 NOW, THEREFORE, for and in consideration of the mutual covenants and
19 conditions hereinafter stated, the Parties hereto agree as follows:

20 1. JPA AMENDMENT.

21 A. The Authority JPA. City agrees to the terms and conditions of
22 the Authority JPA, attached.

23 B. Associate Membership. By adoption of this JPA Amendment,
24 City shall become Associate Member of Authority on the terms and conditions set
25 forth herein and the Authority JPA and consistent with the requirements of the Joint
26 Exercise of Powers Act. The rights and obligations of City as an Associate Member
27 are limited solely to those terms and conditions expressly set forth in this JPA
28 Amendment for the purposes of implementing the California HERO Program within

1 the unincorporated territory of City. Except as expressly provided for by the this JPA
2 Amendment, City shall not have any rights otherwise granted to Authority's Regular
3 Members by the Authority JPA, including but not limited to the right to vote on
4 matters before the Executive Committee or the General Assembly, right to amend
5 or vote on amendments to the Authority JPA, and right to sit on committees or
6 boards established under the Authority JPA or by action of the Executive Committee
7 or the General Assembly, including, without limitation, the General Assembly and
8 the Executive Committee. City shall not be considered a member for purposes of
9 Section 9.1 of the Authority JPA.

10 C. Rights of Authority. This JPA Amendment shall not be
11 interpreted as limiting or restricting the rights of Authority under the Authority JPA.
12 Nothing in this JPA Amendment is intended to alter or modify Authority
13 Transportation Uniform Mitigation Fee (TUMF) Program, the PACE Program
14 administered by Authority within the jurisdictions of its Regular Members, or any
15 other programs administered now or in the future by Authority, all as currently
16 structured or subsequently amended.

17 2. IMPLEMENTATION OF CALIFORNIA HERO PROGRAM WITHIN
18 CITY JURISDICTION.

19 A. Boundaries of the California HERO Program within City
20 Jurisdiction. City shall determine and notify Authority of the boundaries of the
21 incorporated territory within City's jurisdiction within which contractual assessments
22 may be entered into under the California HERO Program (the "Program
23 Boundaries"), which boundaries may include the entire incorporated territory of City
24 or a lesser portion thereof.

25 B. Determination of Eligible Improvements. Authority shall
26 determine the types of distributed generation renewable energy sources, energy
27 efficiency or water conservation improvements, electric vehicle charging
28 infrastructure or such other improvements as may be authorized pursuant to

1 Chapter 29 (the "Eligible Improvements") that will be eligible to be financed under
2 the California HERO Program.

3 C. Establishment of California HERO Program. Authority will
4 undertake such proceedings pursuant to Chapter 29 as shall be legally necessary
5 to enable Authority to make contractual financing of Eligible Improvements available
6 to eligible property owners with the California HERO Program Boundaries.

7 D. Financing the Installation of Eligible Improvements. Authority
8 shall develop and implement a plan for the financing of the purchase and installation
9 of the Eligible Improvements under the California HERO Program.

10 E. Ongoing Administration. Authority shall be responsible for the
11 ongoing administration of the California HERO Program, including but not limited to
12 producing education plans to raise public awareness of the California HERO
13 Program, soliciting, reviewing and approving applications from residential and
14 commercial property owners participating in the California HERO Program,
15 establishing contracts for residential, commercial and other property owners
16 participating in such program, establishing and collecting assessments due under
17 the California HERO Program, adopting and implementing any rules or regulations
18 for the PACE program, and providing reports as required by Chapter 29.

19 City will not be responsible for the conduct of any proceedings
20 required to be taken under Chapter 29; the levy or collection of assessments or any
21 required remedial action in the case of delinquencies in such assessment
22 payments; or the issuance, sale or administration of the Bonds or any other bonds
23 issued in connection with the California HERO Program.

24 F. Phased Implementation. The City desires to phase in the
25 implementation of the California HERO Program by authorizing the Authority to
26 immediately implement the Commercial Program throughout the City and by
27 deferring the authorization for implementation of the Residential Program until such
28 time as the City provides written notice to WRCOG pursuant to Section 3.E. below

1 authorizing the Authority to implement the Residential Program within the City.
2 Nothing in this paragraph shall, however, preclude or otherwise prevent the
3 Authority from judicially validating the California HERO Program and its
4 implementation as a whole.

5 The Parties also recognize and agree that implementation of the
6 California HERO Program as a whole can and may be phased as additional other
7 cities and counties execute similar agreements. City entering into this JPA
8 Amendment will obtain the benefits of and incur the obligations imposed by this JPA
9 Amendment in its jurisdictional area, irrespective of whether cities or counties enter
10 into similar agreements.

11 3. MISCELLANEOUS PROVISIONS.

12 A. Withdrawal. City or Authority may withdraw from this JPA
13 Amendment upon six (6) months written notice to the other party; provided,
14 however, there is no outstanding indebtedness of Authority within City. The
15 provisions of Section 6.2 of the Authority JPA shall not apply to City under this JPA
16 Amendment.

17 B. Mutual Indemnification and Liability. Authority and City shall
18 mutually defend, indemnify and hold the other party and its directors, officials,
19 officers, employees and agents free and harmless from any and all claims,
20 demands, causes of action, costs, expenses, liabilities, losses, damages or injuries
21 of any kind, in law or equity, to property or persons, including wrongful death, to the
22 extent arising out of the willful misconduct or negligent acts, errors or omissions of
23 the indemnifying party or its directors, officials, officers, employees and agents in
24 connection with the California HERO Program administered under this JPA
25 Amendment, including without limitation the payment of expert witness fees and
26 attorneys fees and other related costs and expenses, but excluding payment of
27 consequential damages. Without limiting the foregoing, Section 5.2 of the Authority
28 JPA shall not apply to this JPA Amendment. In no event shall any of Authority's

1 Regular Members or their officials, officers or employees be held directly liable for
2 any damages or liability resulting out of this JPA Amendment.

3 C. Environmental Review. Authority shall be the lead agency
4 under the California Environmental Quality Act for any environmental review that
5 may be required in implementing or administering the California HERO Program
6 under this JPA Amendment.

7 D. Cooperative Effort. City shall cooperate with Authority by
8 providing information and other assistance in order for Authority to meet its
9 obligations hereunder. City recognizes that one of its responsibilities related to the
10 California HERO Program will include any permitting or inspection requirements as
11 established by City.

12 E. Notice. Any and all communications and/or notices in
13 connection with this JPA Amendment shall be either hand-delivered or sent by
14 United States first class mail, postage prepaid, and addressed as follows:

15 Authority:

16 Western Riverside Council of Governments

17 4080 Lemon Street, 3rd Floor MS1032

18 Riverside, CA 92501-3609

19 Attn: Executive Director

20 City:

21 City of Long Beach

22 333 W. Ocean Boulevard

23 Long Beach, CA 90802

24 Attn: Finance Director

25 F. Entire Agreement. This JPA Amendment, together with the
26 Authority JPA, constitutes the entire agreement among the Parties pertaining to the
27 subject matter hereof. This JPA Amendment supersedes any and all other
28 agreements, either oral or in writing, among the Parties with respect to the subject

1 matter hereof and contains all of the covenants and agreements among them with
2 respect to said matters, and each Party acknowledges that no representation,
3 inducement, promise of agreement, oral or otherwise, has been made by the other
4 Party or anyone acting on behalf of the other Party that is not embodied herein.

5 G. Successors and Assigns. This JPA Amendment and each of its
6 covenants and conditions shall be binding on and shall inure to the benefit of the
7 Parties and their respective successors and assigns. A Party may only assign or
8 transfer its rights and obligations under this JPA Amendment with prior written
9 approval of the other Party, which approval shall not be unreasonably withheld.

10 H. Attorney's Fees. If any action at law or equity, including any
11 action for declaratory relief is brought to enforce or interpret the provisions of this
12 Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

13 I. Governing Law. This JPA Amendment shall be governed by
14 and construed in accordance with the laws of the State of California, as applicable.

15 J. No Third Party Beneficiaries. This JPA Amendment shall not
16 create any right or interest in the public, or any member thereof, as a third party
17 beneficiary hereof, nor shall it authorize anyone not a Party to this JPA Amendment
18 to maintain a suit for personal injuries or property damages under the provisions of
19 this JPA Amendment. The duties, obligations, and responsibilities of the Parties to
20 this JPA Amendment with respect to third party beneficiaries shall remain as
21 imposed under existing state and federal law.

22 K. Severability. In the event one or more of the provisions
23 contained in this JPA Amendment is held invalid, illegal or unenforceable by any
24 court of competent jurisdiction, such portion shall be deemed severed from this JPA
25 Amendment and the remaining parts of this JPA Amendment shall remain in full
26 force and effect as though such invalid, illegal, or unenforceable portion had never
27 been a part of this JPA Amendment.

28 L. Headings. The paragraph headings used in this JPA

1 Amendment are for the convenience of the Parties and are not intended to be used
2 as an aid to interpretation.

3 M. Amendment. This JPA Amendment may be modified or
4 amended by the Parties at any time. Such modifications or amendments must be
5 mutually agreed upon and executed in writing by both Parties. Verbal modifications
6 or amendments to this JPA Amendment shall be of no effect.

7 N. Effective Date. This JPA Amendment shall become effective
8 upon the execution thereof by the Parties hereto.

9 IN WITNESS WHEREOF, the Parties hereto have caused this JPA
10 Amendment to be executed and attested by their officers thereunto duly authorized as of
11 the date first above written.

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Lona Beach, CA 90802-4664

12 WESTERN RIVERSIDE COUNCIL OF
13 GOVERNMENTS

14 _____, 20__

By _____
Name _____
Title _____

16 "Authority"

17 CITY OF LONG BEACH, a municipal
18 corporation

19 _____, 20__

By _____
City Manager

21 "City"

22 This Agreement is approved as to form on _____, 20__.

23 CHARLES PARKIN, City Attorney

24 By _____
25 Deputy
26
27
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