



CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

333 West Ocean Boulevard • Long Beach, CA 90802 • (562) 570-6711 FAX (562) 570-7650

April 7, 2015

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

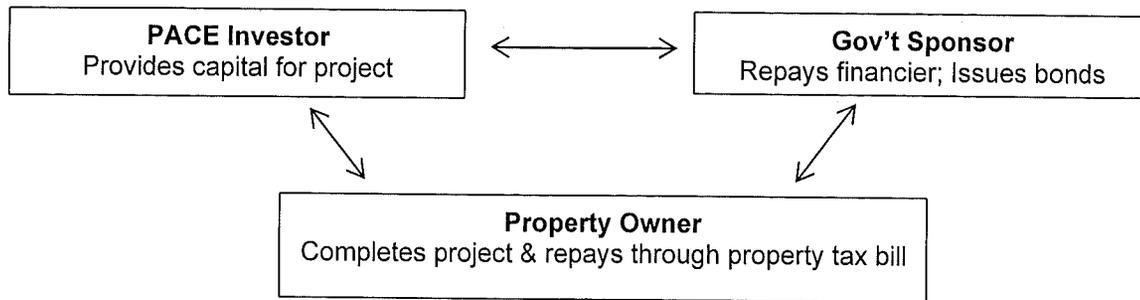
Adopt the attached Resolution authorizing the City to join the Figtree PACE Program; authorizing the California Enterprise Development Authority to conduct contractual assessment proceedings and levy contractual assessments within the jurisdiction of the City of Long Beach; and authorizing related actions;

Adopt the attached Resolution authorizing the City to join the CaliforniaFIRST Program; authorizing the California Statewide Communities Development Authority to accept applications from property owners, conduct contractual assessment proceedings and levy contractual assessments within the jurisdiction of the city; and authorizing related actions; and

Adopt the attached Resolution consenting to inclusion of certain properties within the jurisdiction in the California HERO Program to finance distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure, and approving the amendment to a certain joint powers agreement thereto. (Citywide)

DISCUSSION

Assembly Bill 811 (AB 811) was approved by the State Legislature and signed by the Governor on July 21, 2008. AB 811 and its amendments authorize local governments to provide financing to qualified property owners for the installation of energy and water efficiency improvements, as well as distributed generation renewable energy sources. Participating property owners repay the cost of the improvements through an assessment levied against their property, that is payable in semi-annual installments on property tax bills, with a lien filed against the property as security. The assessment remains with the property should the owner transfer or sell it. In turn, government jurisdictions, such as cities, counties, or joint powers authorities, issue municipal bonds backed by the assessments.



This financing mechanism, Property Assessed Clean Energy (PACE), mitigates two key barriers that may prevent property owners from implementing a greater number of energy efficiency, water efficiency, and renewable energy projects: (1) it eliminates the need for property owners to pay out-of-pocket up-front costs for improvements; and (2) it establishes a lien obligation that is attached to the property and not the individual borrower. These programs represent an innovative partnership between the public and private sector, leading to a greener city, decreased costs for property owners, and spurring growth in this sector of the economy.

PACE, however, also exposes property owners to risk. Unlike traditional lenders, most PACE programs do not use traditional indicators, such as debt-to-income ratios or FICO credit scores, to evaluate a property owner's ability to repay; instead, they evaluate the value of the property in relation to the size of the lien. An evaluation of the property owner is done, such as ensuring the owner has not filed bankruptcy in the preceding years and is current on the mortgage and property taxes. The interest rates are typically fixed for the life of the lien, though they fluctuate over time. The interest rate, and APR which often includes program fees, can exceed market rates. What's more, PACE becomes the senior lien on the property, meaning failure to pay allows bondholders to seek foreclosure. Finally, most PACE programs rely on contractors to generate demand for the financing; unscrupulous contractors could encourage property owners to make poor choices. Working in tandem, these factors place property owners at risk for improvements they cannot afford, potentially resulting in foreclosure.

Commercial PACE programs, however, mitigate some of these risks. Commercial programs are available to a wide range of commercial property types, including commercial offices, industrial sites, multifamily homes (5 units or more), hotels, schools, hospitals, and non-profits. Commercial programs require the consent of the primary mortgage holder before executing an agreement. In response to this request for consent, most lending institutions complete a thorough review of the borrower, essentially re-underwriting the mortgagee. The lender will not give consent unless the mortgagee and their property can sustain the payments. Thus, even though the program does not adhere to traditional underwriting criteria, the mortgagee is still subjected to strict criteria. This process mitigates some of the risks posed by residential PACE programs. In addition, the financial literacy of commercial property owners typically exceeds that of homeowners, allowing the owners to better assess the benefits and risks of PACE financing. Commercial PACE programs tend to require more engagement from the PACE lender, so it is not simply the contractor and the property owner working together. This third party provides additional oversight to ensure that the project costs seem in line with the proposed improvements.

PACE Programs in Long Beach

On June 22, 2010, the Long Beach City Council adopted a resolution authorizing participation in the Los Angeles County Clean Energy Program (which has since been renamed as LA County PACE). This program, the only PACE program authorized to operate in the City of Long Beach, currently serves commercial properties. The program provides financing for projects over \$500,000. The LA County PACE program has completed 3 commercial projects to date, including one in Long Beach. The International Brotherhood of Teamsters took advantage of PACE financing to install solar panels, new lighting, and a "cool roof" at their Local 848 meeting hall, located in Long Beach. As a result, building energy use is estimated to be reduced by 83%, resulting in nearly \$75,000 in annual savings.

Though Long Beach property owners have utilized the LA County commercial program, many projects are not large enough to be eligible. The closing costs for the LA County commercial program range from approximately \$20,000 - \$30,000 per project, making it reasonable for projects over \$500,000, but unaffordable for smaller, worthwhile projects. Authorizing additional PACE programs to operate in Long Beach will allow smaller commercial projects to be completed. In addition, authorization of multiple programs injects competition into the marketplace, leading to better rates for consumers.

The recommended additional commercial PACE programs include Figtree PACE, CaliforniaFIRST, and California HERO, as outlined below. Authorization of these programs will not conflict with the LA County PACE. Exhibit A details the underwriting standards for each program.

1. Figtree PACE launched in 2010. The Figtree program is offered through CEDA, created by the California Association for Local Economic Development. Currently 84 cities and counties participate in Figtree PACE.
2. California HERO launched in 2011 by WRCOG, a joint powers authority. Currently, 204 cities and counties participate in California HERO.
3. CaliforniaFIRST was launched in 2012 by the CSCDA, a statewide joint powers authority sponsored by the California State Association of Counties and League of California Cities. Currently, 144 cities in 28 counties participate in CaliforniaFIRST.

If a commercial property owner chooses to participate, the installed improvements will be financed by the issuance of bonds by either CEDA, CSCDA, or WRCOG. The bonds are secured by a voluntary contractual assessment levied on the owner's property, with no recourse to the local government or other participating jurisdictions. Participation in the program is 100% voluntary. Property owners who wish to participate in the program agree to repay the amount borrowed through the voluntary contractual assessment collected together with their property taxes. The City can withdraw from these programs at any time by passing a resolution rescinding the authorization.

HONORABLE MAYOR AND CITY COUNCIL

April 7, 2015

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This matter was reviewed by Deputy City Attorney Linda Vu on February 25, 2015 and by Budget Management Officer Victoria Bell on February 26, 2015.

TIMING CONSIDERATIONS

City Council action is requested on April 7, 2015 to allow Long Beach commercial property owners to take advantage of the program as soon as possible.

FISCAL IMPACT

The recommended PACE programs do not require the use of City funds. Very limited staff time is required to assist with the implementation of the program, in particular, facilitating the initiation of the programs. There will be no monetary impact to the City's budget. Approval of this recommendation could result in a positive local job impact.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



PATRICK H. WEST
CITY MANAGER

PHW; TM; RAT

Attachments: Exhibit A – Commercial PACE Programs: Criteria and Standards
Resolution – Figtree PACE Authorizing Resolution and Documentation
Resolution – California HERO Authorizing Resolution and Documentation
Resolution - CaliforniaFIRST Authorizing Resoluti.on and Documentation

EXHIBIT A

Exhibit A: Commercial PACE Programs: Criteria and Standards

	Figtree	HERO	California First
# Projects Completed	20	11	3
Interest Rate	4.7-6.5%	5.75-6.5%	5.88% - 6.75%
APR	4.75-6.8%	6.4 - 6.85%	6.30%
Fixed Rate? Adjustable?	Fixed	Fixed; varies by term of financing	fixed
Terms (based on useful life of product)	Up to 20 Years	Up to 20 Years	Up to 20 Years
Minimum Project Size	\$5,000	\$5,000	\$50,000
Max Project Size	No	Up to 20% of property value	Max size set by lien to property value ratio
Lien to Value	Improvements cannot exceed 10% of total property value	Improvements cannot exceed 20% of property value	Improvements cannot exceed 15% of property value for in-house capital
Mortgage + Lien relation to Value	Financing plus mortgage cannot exceed 100% of property value	Financing plus mortgage (or other debt) cannot exceed 90% of the property value.	Financing plus mortgage cannot exceed 100% of property value
Lender Consent Required?	Yes, written acknowledgement	Yes, written acknowledgement	Yes, written consent
Bankruptcy	Cannot be in bankruptcy and must not have been in bankruptcy in the past five (5) years. The property must not be an asset in bankruptcy.	No bankruptcy proceedings for past 7 years or for owner or affiliated companies	No bankruptcies (business or personal) in the last 2 years. The property must not be an asset in a bankruptcy proceeding.
Property Taxes	Property owner(s) must be current on their property taxes for the prior three (3) years, or since owning the property.	Property owner(s) must be current on their property taxes, and not delinquent or late for the prior three (3) years, or since owning the property.	Property owner(s) must be current on their property taxes for the prior 12 months
Current Mortgage	Current on mortgage payments and must not have been delinquent in the past three (3) years.	Current on all property debt for past 6 months.	Must be current on mortgage.
Involuntary Liens	No current involuntary liens and/or judgments over \$1,000	Not subject to an involuntary liens.	No current involuntary liens and/or judgments over \$1,000
Energy Audit	Encouraged, but not required.	Encouraged, but not required.	Encouraged, but not required.
Program Fees	\$695, plus \$100 per parcel	Up to 7% program fee	3 - 5%

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

1 RESOLUTION NO.
2

3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AUTHORIZING THE CITY TO
5 JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING
6 THE CALIFORNIA ENTERPRISE DEVELOPMENT
7 AUTHORITY TO CONDUCT CONTRACTUAL
8 ASSESSMENT PROCEEDINGS AND LEVY
9 CONTRACTUAL ASSESSMENTS WITHIN THE
10 JURISDICTION OF THE CITY OF LONG BEACH; AND
11 AUTHORIZING RELATED ACTIONS

12
13 WHEREAS, the California Enterprise Development Authority ("CEDA") is a
14 joint exercise of powers authority, comprised of cities and counties in the State of
15 California, including the City of Long Beach (the "City"); and

16 WHEREAS, CEDA has adopted the Figtree Property Assessed Clean
17 Energy (PACE) and Job Creation Program (the "Program" or "Figtree PACE"), to allow
18 the financing of certain renewable energy, energy efficiency and water efficiency
19 improvements (the "Improvements") through the levy of contractual assessments
20 pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and
21 the issuance of improvement bonds or other evidences of indebtedness (the "Bonds")
22 under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et
23 seq.) (the "1915 Act") upon the security of the unpaid contractual assessments; and

24 WHEREAS, Chapter 29 provides that assessments may be levied under its
25 provisions only with the free and willing consent of the owner of each lot or parcel on
26 which an assessment is levied at the time the assessment is levied; and

27 WHEREAS, the City desires to allow the owners of certain types of
28 participating property ("Participating Parcel") within its jurisdiction ("Participating Property

1 Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment
2 proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the
3 Improvements; and

4 WHEREAS, CEDA will conduct assessment proceedings under Chapter 29
5 to establish an assessment district (the "District") and issue Bonds under the 1915 Act to
6 finance Improvements; and

7 WHEREAS, there has been presented to this meeting a proposed form of
8 Resolution of Intention to be adopted by CEDA in connection with such assessment
9 proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A; and

10 WHEREAS, said ROI sets forth the territory within which assessments may
11 be levied for Figtree PACE which territory shall be coterminous with the City's official
12 boundaries of record at the time of adoption of the ROI (the "Boundaries"); and

13 WHEREAS, pursuant to Chapter 29, the City authorizes CEDA to conduct
14 assessment proceedings, levy assessments, pursue remedies in the event of
15 delinquencies, and issue bonds or other forms of indebtedness to finance the
16 Improvements in connection with Figtree PACE; and

17 WHEREAS, to protect the City in connection with operation of the Figtree
18 PACE program, Figtree Energy Financing, the program administrator, has agreed to
19 defend and indemnify the City; and

20 WHEREAS, the City will not be responsible for the conduct of any
21 assessment proceedings, the levy of assessments, any required remedial action in the
22 case of delinquencies, the issuance, sale or administration of the bonds or other
23 indebtedness issued in connection with Figtree PACE;

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

26 Section 1. Good Standing. The City is a municipal corporation and a
27 member of CEDA in good standing.

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1 Section 2. Public Benefits. On the date hereof, the City Council hereby
2 finds and determines that large multifamily and non-residential properties ("Participating
3 Parcel") will benefit from the Program and issuance of Bonds by CEDA in connection with
4 Figtree PACE will provide significant public benefits, including without limitation, savings
5 in effective interest rates, bond preparation, bond underwriting and bond issuance costs
6 and reductions in effective user charges levied by water and electricity providers within
7 the boundaries of the City. Participating Parcel consists of commercial, industrial,
8 agriculture, and large multifamily properties containing five (5) or more units.

9 Section 3. Appointment of CEDA. The City hereby appoints CEDA as its
10 representative to (i) record the assessment against the Participating Parcels, (ii)
11 administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part
12 1 of Division 10 of the California Streets and Highways Code (commencing with Section
13 8500 et seq.) (the "Law"), (iii) prepare program guidelines for the operations of the
14 Program and (iv) proceed with any claims, proceedings or legal actions as shall be
15 necessary to collect past due assessments on the properties within the District in
16 accordance with the Law and Section 6509.6 of the California Government Code. The
17 City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this
18 Resolution.

19 Section 4. Assessment Proceedings. In connection with Figtree PACE,
20 the City hereby consents to the special assessment proceedings by CEDA pursuant to
21 Chapter 29 on any Participating Parcel within the Boundaries and the issuance of Bonds
22 under the 1915 Act, provided that:

23 A. Such proceedings are conducted pursuant to one or more
24 Resolutions of Intention in substantially the form of the ROI;

25 B. The Participating Property Owners, who shall be the legal
26 owners of such property, voluntarily execute a contract pursuant to Chapter
27 29 and comply with other applicable provisions of California law in order to
28 accomplish the valid levy of assessments; and

1 C. The City will not be responsible for the conduct of any
2 assessment proceedings, the levy of assessments, any required remedial
3 action in the case of delinquencies in such assessment payments, or the
4 issuance, sale or administration of the Bonds in connection with Figtree
5 PACE.

6 Section 5. Program Report. The City Council hereby acknowledges that
7 pursuant to the requirements of Chapter 29, CEDA has prepared and will update from
8 time to time the "Program Report" for Figtree PACE (the "Program Report") and
9 associated documents, and CEDA will undertake assessment proceedings and the
10 financing of Improvements as set forth in the Program Report.

11 Section 6. Foreclosure. The City Council hereby acknowledges that the
12 Law permits foreclosure in the event that there is a default in the payment of
13 assessments due on a property. The City Council hereby designates CEDA as its
14 representative to proceed with collection and foreclosure of the liens on the defaulting
15 properties within the District, including accelerated foreclosure pursuant to the Program
16 Report.

17 Section 7. Indemnification. The City Council acknowledges that Figtree
18 has provided the City with an indemnification agreement, as shown in Exhibit B, for
19 negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its
20 officers, employees, subcontractors and agents. The City Council hereby authorizes the
21 appropriate officials and staff of the City to execute and deliver the Indemnification
22 Agreement to Figtree.

23 Section 8. City Contact Designation. The appropriate officials and staff
24 of the City are hereby authorized and directed to make applications for Figtree PACE
25 available to all property owners who wish to finance Improvements. The following staff
26 persons, together with any other staff designated by the City Manager from time to time,
27 are hereby designated as the contact persons for CEDA in connection with Figtree
28 PACE: Larry Rich, Sustainability Coordinator, (562) 570-5839,

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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1 Larry.Rich@longbeach.gov.

2 Section 9. City Execution of Documents. The appropriate officials and
3 staff of the City are hereby authorized and directed to execute and deliver such closing
4 certificates, requisitions, agreements and related documents as are reasonably required
5 by CEDA in accordance with the Program Report to implement Figtree PACE for
6 Participating Property Owners.

7 Section 10. CEQA. The City Council hereby finds that adoption of this
8 Resolution is not a "project" under the California Environmental Quality Act ("CEQA"),
9 because the Resolution does not involve any commitment to a specific project which may
10 result in a potentially significant physical impact on the environment, as contemplated by
11 Title 14, California Code of Regulations, Section 15378(b)(4).

12 Section 11. Services related to the formation and administration of the
13 assessment district will be provided by CEDA at no cost to the City.

14 Section 12. The City Clerk is hereby authorized and directed to transmit a
15 certified copy of this resolution to Figtree Energy Financing.

16 Section 13. This resolution shall take effect immediately upon its adoption
17 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 _____, 2015 by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

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EXHIBIT "A"
CEDA Resolution of Intention

RESOLUTION NO. _____

RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS IN THE CITY OF LONG BEACH

WHEREAS, the California Enterprise Development Authority (“CEDA”) is a joint powers authority organized and existing pursuant to the Joint Powers Act (Government Code Section 6500 et seq.) and that certain Joint Exercise of Powers Agreement (the “Agreement”) dated as of June 1, 2006, among the cities of Eureka, Lancaster and Selma; and

WHEREAS, CEDA is authorized under the Agreement and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

WHEREAS, CEDA has obtained authorization from the City of Long Beach (the “City”) located in the County of Los Angeles (the “County”) to conduct assessment proceedings and to enter into contractual assessments to finance the installation of Authorized Improvements within the jurisdictional boundaries of the City pursuant to Chapter 29; and

WHEREAS, CEDA desires to declare its intention to establish a Figtree PACE program (“Figtree PACE”) in the City, pursuant to which CEDA, subject to certain conditions set forth below, would enter into contractual assessments to finance the installation of Authorized Improvements in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1. Findings. The Board of Directors hereby finds and determines the following:

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.
- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.

- (d) A public purpose will be served by establishing a contractual assessment program, to be known as Figtree PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

Section 2. Determination of Public Interest. The Board of Directors hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the City, within which CEDA and property owners within the City may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for CEDA to finance the installation of Authorized Improvements in the City pursuant to Chapter 29.

Section 3. Identification of Authorized Improvements. CEDA hereby declares its intention to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 hereof (the "Report"), as that Report may be amended from time to time.

Section 4. Identification of Boundaries. Contractual assessments may be entered into by property owners located within the entire geographic territory of the City.

Section 5. Proposed Financing Arrangements. Under Chapter 29, CEDA may issue bonds, notes or other forms of indebtedness (the "Bonds") pursuant to Chapter 29 that are payable by contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any indebtedness issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29. The creditworthiness of a property owner to participate in the financing of Authorized Improvements will be based on the criteria developed by Figtree Energy Financing (the "Program Administrator") upon consultation with Figtree PACE Program underwriters or other financial representatives, CEDA general counsel and bond counsel, and as shall be approved by the Board of Directors of CEDA. In connection with indebtedness issued under the Improvement Bond Act of 1915 that is payable from contractual assessments, serial and/or term improvement bonds or other indebtedness shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date), and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by Board of Directors at the time of the issuance and sale of the indebtedness. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of CEDA to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. Neither CEDA, nor any of its members participating in the Figtree PACE Program, shall advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

CEDA hereby authorizes the Program Administrator, upon consultation with CEDA general counsel, bond counsel and the Figtree PACE underwriter, to commence preparation of documents and take necessary steps to prepare for the issuance of bonds, notes or other forms of indebtedness as authorized by Chapter 29.

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

Section 6. Public Hearing. Pursuant to the Act, CEDA hereby orders that a public hearing be held before CEDA Board (the "Board"), at 550 Bercut Drive, Suite G, Sacramento, CA 95811, on _____, _____, at ____ A_, for the purposes of allowing interested persons to object to, or inquire about, the proposed Figtree PACE Program. The public hearing may be continued from time to time as determined by the Board for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed Figtree PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

Section 7. Notice to Water and Electric Providers. Pursuant to Section 5898.24 of the Streets & Highways Code, written notice of the proposed contractual assessment program within the City to all water and electric providers within the boundaries of the City has been provided.

Section 8. Report. The Board hereby directs the Program Administrator to prepare the Report and file said Report with the Board at or before the time of the public hearing described in Section 6 hereof containing all of the following:

- a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.
- b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner within the City.
- c) A statement of CEDA's policies concerning contractual assessments including all of the following:

- (1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.
 - (2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
 - (3) A maximum aggregate dollar amount of contractual assessments.
 - (4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.
- d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.
- e) A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the County, and a plan for financing the payment of those fees.

Section 9. Nature of Assessments. Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by CEDA, the assessments shall be collected in the same manner and at the same time as the general taxes of the County on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

Section 10. Consultations with County Auditor-Controller. CEDA hereby directs the Program Administrator to enter into discussions with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to CEDA for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

Section 12. Procedures for Responding to Inquiries. The Program Administrator shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

Section 13. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 201_.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair

ATTEST:

Larry Cope, Secretary

EXHIBIT "B"

Indemnification Agreement

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INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE CITY OF LONG BEACH AND
FIGTREE COMPANY, INC.

This Indemnification Agreement (the "Agreement") is entered into by and between the CITY OF LONG BEACH, a municipal corporation, duly organized and existing under the laws of the State of California (the "City") and FIGTREE COMPANY, INC., a California corporation, the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program (the "Administrator"), which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (the "Authority").

RECITALS

WHEREAS, the Authority is a joint exercise of powers authority whose members include the City in addition to other cities and counties in the State of California; and

WHEREAS, the Authority established the Figtree Property Assessed Clean Energy and Job Creation Program (the "Figtree PACE Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds, or other forms of indebtedness, under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

WHEREAS, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the City; and

WHEREAS, the legislative body of the City adopted or will adopt a resolution authorizing the City to join the Figtree PACE Program; and

1 WHEREAS, the City will not be responsible for the formation, operation and
2 administration of the Figtree PACE Program as well as the sale and issuance of any bonds
3 or other forms of indebtedness in connection therewith, including the conducting of
4 assessment proceedings, the levy and collection of assessments and any remedial action
5 in the case of such assessment payments, and the offer, sale and administration of any
6 bonds issued by the Authority on behalf of the Figtree PACE Program; and

7 WHEREAS, the Administrator is the administrator of the Figtree PACE
8 Program and agrees to indemnify the City in connection with the operations of the Figtree
9 PACE Program as set forth herein;

10 NOW, THEREFORE, in consideration of the above premises and of the City's
11 agreement to join the Figtree PACE Program, the parties agree as follows:

12 1. Indemnification. Figtree has provided the CEDA with an
13 indemnification for negligence or malfeasance of any type as a result of the acts or
14 omissions of Figtree, its officers, employees, subcontractors and agents, arising from or
15 related to the Figtree PACE Program, the assessments, the assessment districts, the
16 improvements or the financing and marketing thereof. Figtree agrees to defend, indemnify
17 and hold harmless the City, its officers, elected or appointed officials, employees, agents
18 and volunteers from and against any and all actions, suits, proceedings, claims, demands,
19 losses, costs and expenses, including legal costs and attorneys' fees, for injury or damage
20 due to negligence or malfeasance of any type claims as a result of the acts or omissions
21 of Figtree, except for such loss or damage which was caused by the sole negligence or
22 willful misconduct of the City. This indemnity shall apply to all claims and liability regardless
23 of whether any insurance policies are applicable. The policy limits do not act as limitation
24 upon the amount of indemnification to be provided by Figtree.

25 2. Amendment/Interpretation of this Agreement. This Agreement
26 represents the entire understanding of the parties as to those matters contained herein. No
27 prior oral or written understanding shall be of any force or effect with respect to those
28 matters covered hereunder. No supplement, modification or amendment of this Agreement

1 RESOLUTION NO.
2

3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AUTHORIZING THE CITY TO
5 JOIN THE CALIFORNIAFIRST PROGRAM; AUTHORIZING
6 THE CALIFORNIA STATEWIDE COMMUNITIES
7 DEVELOPMENT AUTHORITY TO ACCEPT
8 APPLICATIONS FROM PROPERTY OWNERS, CONDUCT
9 CONTRACTUAL ASSESSMENT PROCEEDINGS AND
10 LEVY CONTRACTUAL ASSESSMENTS WITHIN THE
11 JURISDICTION OF THE CITY; AND AUTHORIZING
12 RELATED ACTIONS
13

14 WHEREAS, the California Statewide Communities Development Authority
15 (“California Communities”) is a joint exercise of powers authority the members of which
16 include numerous cities and counties in the State of California, including the City of Long
17 Beach (the “City”); and

18 WHEREAS, California Communities has established the CaliforniaFIRST
19 program (the “CaliforniaFIRST Program”) and will provide financing for certain
20 improvements authorized by Chapter 29 of Division 7 of the Streets & Highways Code
21 (“Chapter 29”), including, but not limited to, renewable energy, energy efficiency and
22 water efficiency improvements and seismic strengthening improvements (the
23 “Improvements”) through the levy of contractual assessments pursuant to Chapter 29 of
24 Division 7 of the Streets & Highways Code (“Chapter 29”) and the issuance of
25 improvement bonds (the “Bonds”) under the Improvement Bond Act of 1915 (Streets and
26 Highways Code Sections 8500 and following) (the “1915 Act”) upon the security of the
27 unpaid contractual assessments; and

28 WHEREAS, Chapter 29 provides that assessments may be levied under its

1 provisions only with the free and willing consent of the owner of each lot or parcel on
2 which an assessment is levied at the time the assessment is levied; and

3 WHEREAS, the City desires to allow the owners of certain types of
4 participating property ("Participating Property Owners") within the jurisdiction of the City
5 to participate in the CaliforniaFIRST Program and to allow California Communities to
6 conduct assessment proceedings under Chapter 29 within the jurisdiction of the City and
7 to issue Bonds under the 1915 Act to finance the Improvements; and

8 WHEREAS, California Communities will conduct assessment proceedings
9 under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements;

10 WHEREAS, the City will not be responsible for the conduct of any
11 assessment proceedings; the levy or collection of assessments or any required remedial
12 action in the case of delinquencies in such assessment payments; or the issuance, sale
13 or administration of the Bonds or any other bonds issued in connection with the
14 CaliforniaFIRST Program;

15 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
16 follows:

17 Section 1. This City Council hereby finds and declares that large
18 multifamily and non-residential properties ("Participating Parcel") in the City will benefit
19 from the availability of the CaliforniaFIRST Program within the jurisdiction of the City and,
20 pursuant thereto, the conduct of special assessment proceedings by California
21 Communities pursuant to Chapter 29 and the issuance of Bonds under the 1915 Act.
22 Participating Parcel consists of commercial, industrial, agricultural, and large multifamily
23 properties containing five (5) or more units.

24 Section 2. In connection with the CaliforniaFIRST Program, the City
25 hereby consents to the conduct of special assessment proceedings by California
26 Communities pursuant to Chapter 29 on any Participating Parcel within its jurisdiction and
27 the issuance of Bonds under the 1915 Act; provided, that

28 A. The Participating Property Owners, who shall be the legal

1 owners of such property, execute a contract pursuant to Chapter 29 and
2 comply with other applicable provisions of California law in order to
3 accomplish the valid levy of assessments; and

4 B. The City will not be responsible for the conduct of any
5 assessment proceedings; the levy or collection of assessments or any
6 required remedial action in the case of delinquencies in such assessment
7 payments; or the issuance, sale or administration of the Bonds or any other
8 bonds issued in connection with the CaliforniaFIRST Program.

9 C. The issuance of Bonds will occur following receipt of a final
10 judgment in a validation action filed by California Communities pursuant to
11 Code of Civil Procedure Section 860 that the Bonds are legal obligations of
12 California Communities.

13 Section 3. Pursuant to the requirements of Chapter 29, California
14 Communities has prepared and will update from time to time the "Program Report" for the
15 CaliforniaFIRST Program (the "Program Report"), and California Communities will
16 undertake assessment proceedings and the financing of Improvements as set forth in the
17 Program Report.

18 Section 4. The appropriate officials and staff of the City are hereby
19 authorized and directed to make applications for the CaliforniaFIRST program available
20 to all property owners who wish to finance Improvements; provided, that California
21 Communities shall be responsible for providing such applications and related materials at
22 its own expense. The following staff persons, together with any other staff persons
23 chosen by the City Manager from time to time, are hereby designated as the contact
24 persons for California Communities in connection with the CaliforniaFIRST Program:
25 Larry Rich, Sustainability Coordinator, (562) 570-5839, Larry.Rich@longeach.gov.

26 Section 5. The appropriate officials and staff of the City are hereby
27 authorized and directed to execute and deliver such closing certificates, requisitions,
28 agreements and related documents as are reasonably required by California

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Communities in accordance with the Program Report to implement the CaliforniaFIRST
2 Program for Participating Property Owners.

3 Section 6. The City Council hereby finds that adoption of this resolution
4 is not a "project" under the California Environmental Quality Act, because the resolution
5 does not involve any commitment to a specific project which may result in a potentially
6 significant physical impact on the environment, as contemplated by Title 14, California
7 Code of Regulations, Section 15378(b)(4)).

8 Section 7. The City Clerk is hereby authorized and directed to transmit a
9 certified copy of this resolution to the Secretary of California Communities.

10 Section 8. This resolution shall take effect immediately upon its adoption
11 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

12 I hereby certify that the foregoing resolution was adopted by the City
13 Council of the City of Long Beach at its meeting of _____, 20__ by the

14 following vote:

15 Ayes: Councilmembers: _____
16 _____
17 _____

18
19 Noes: Councilmembers: _____
20 _____

21 Absent: Councilmembers: _____
22 _____

23
24 _____
25 City Clerk

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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1 RESOLUTION NO.

2
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 _____, 2015 by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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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

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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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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long 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__.

24 CHARLES PARKIN, City Attorney

25 By _____
26 Deputy