



# City of San Leandro

Meeting Date: June 6, 2016

## Staff Report

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**File Number:** 16-252

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.M.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for Property Assessed Clean Energy (PACE) Financing Programs - Adoption of Resolutions Authorizing Membership in Five (5) PACE Programs and Approval of Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA) with Residential PACE Providers

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### SUMMARY AND RECOMMENDATIONS

Property Assessed Clean Energy (PACE) is a mechanism for local home and business owners to finance the upfront cost of energy efficiency, water conservation, and renewable energy improvements to their properties. Property owners borrow funds for the improvements and repay the loan via a special voluntary property tax assessment.

There is currently one PACE program, CaliforniaFIRST, operating in the City of San Leandro. Several additional PACE lenders have approached the City in recent months requesting that the City take the necessary actions to allow them to also offer PACE loans in San Leandro, including joining in three Joint Powers Authority (JPAs). JPA-sponsored PACE programs offer little risk to local jurisdictions because the JPA assumes the legal liability. Any bonds issued to finance projects are issued by the JPA.

To help San Leandro and other cities evaluate the PACE requests, the Association of Bay Area Governments (ABAG) worked with the PACE providers to develop and agree to follow a set of best practices that will ensure that the programs meet certain basic quality and reporting standards. On behalf of its member jurisdictions (including San Leandro), ABAG developed a Regional Collaborative Services Agreement (RCSA) to ensure these best practices.

In order to provide property owners with more options, staff recommends that the City Council take a series of actions outlined in this report that will allow several new PACE programs (all of which have signed on to the ABAG RCSA) to operate in San Leandro. Staff recommends that the City Council:

1. Adopt and authorize execution of the attached resolutions and agreements consenting to:
  - a. join the Western Riverside Council of Governments (WRCOG), a joint powers authority, as an associate member and participate in the California HERO PACE program;
  - b. join the California Enterprise Development Authority (CEDA), a joint powers authority, as an associate member and participate in the Figtree PACE program;
  - c. join the California Home Finance Authority (CHFA)/Golden State Finance Authority(GSFA), a joint powers authority, as an associate member and participate in the Ygrene 555 and Ygrene 811 PACE Programs (two separate resolutions); and
  - d. participate in the OPEN PACE program with the California State Community Development Authority.
  
2. Authorize the City Manager to approve and sign the acknowledgement addendums of the Regional Collaborative Services Agreement, as executed between ABAG and Residential PACE Providers for each of the PACE providers listed above.

## **BACKGROUND**

PACE financing is a relatively new model. Two pieces of legislation enable PACE programs in California and several additional laws clarify and expand this legislation:

1. California AB 811 (July 21, 2008) allows renewable energy sources and energy efficiency upgrades to be financed through an assessment district. California AB 474 (January 1, 2010) and California SB 1340 (September 30, 2010) expanded AB 811 to include water-efficiency improvements and the installation of charging stations for electric vehicles.
  
2. Senate Bill (SB) 555 (October 5, 2011) amended the Mello-Roos Community Facilities Act to allow for the creation of Community Facilities Districts (“CFDs”) for the purpose of financing or refinancing the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure. Individual properties can be annexed into the district and be subject to the special tax that is imposed to repay project financing if the City Council adopts a resolution consenting to the inclusion of parcels in the incorporated areas of the City within the CFD and each participating owner provides its unanimous written approval for annexation of its property into the PACE CFD.

In July 2010, the Federal Housing Finance Agency (FHFA), along with Fannie Mae and Freddie Mac, objected to the first priority lien status of residential PACE financing and announced they would not purchase mortgages for homes with PACE obligations due to concerns that PACE loans would be paid first in case of foreclosure. This announcement slowed the residential PACE market for several years. In response, in 2013 Governor Brown signed SB 96, which created a \$10 million PACE Loan Loss Reserve to keep mortgage lenders whole during a foreclosure or a forced sale of a property with a PACE assessment. While the FHFA has not changed its position, the California PACE market grew rapidly with the assurance of the State reserve.

## **PACE in the City of San Leandro**

In January 2010, in response to AB 811 and in conjunction with the other cities in Alameda County, San Leandro's City Council adopted a resolution authorizing the City to join the California Statewide Communities Development Authority, a joint powers authority, and opted in to participate in the CaliforniaFIRST PACE Program. CaliforniaFIRST is currently the only PACE program offered in San Leandro. It has been providing energy efficiency financing in San Leandro to commercial properties since 2012 and to residential properties since September 2014. To date, there are a total of 72 CaliforniaFIRST residential upgrade projects in San Leandro that have received a total of \$4,616,045 in funding, resulting in lifetime savings of 160 kWh of electricity and 373,897 gallons of water; and 2,390 tons of greenhouse gas emission reductions.

### **Analysis**

PACE programs provide an additional means of financing to make environmentally sustainable property improvements more affordable and accessible to property owners. PACE financing provides capital for renewable energy systems and a range of energy and water efficiency improvements to buildings. Some PACE programs also include seismic upgrades as an eligible improvement. The offerings differ from traditional home equity loans or lines of credit in that eligibility is based on property equity rather than the credit worthiness of the applicant. Some advantages to PACE financing include 100% financing for eligible improvements, a repayment period of up to twenty years, and the reliability of pre-approved contractors.

PACE also differs from traditional financing in its repayment structure. Debt obligations run with the property rather than the applicant, since the repayment is generated from the utility savings associated with the improvements. Thus, whoever owns the building is responsible for repayment per the conditions of the agreement with the program administrator. Terms vary by program, but are generally considered in line with market rate options for similar improvements. As with other forms of private lending, all transactions are voluntary and no property owner is required to participate in any program.

### **Benefits of PACE Programs**

When the country's first PACE program launched in Berkeley in 2008, it was a new and untested financing mechanism. At that time, a handful of municipalities launched self-funded PACE programs. Since then, over 30 states have passed PACE-enabling legislation and private financing companies have entered the market by partnering with joint powers authorities to establish and finance PACE programs.

Creating a competitive marketplace provides a variety of options for home and business owners to finance improvement projects based on finance terms, conditions of approval, and eligible measures offered by the different programs. Additionally, authorizing multiple providers ensures that financing will remain available if one or more providers cease to operate in San Leandro. Finally, it is anticipated that there will be increased economic activity as a result of each new provider operating locally.

Supporting an expanded PACE marketplace helps to implement the City of San Leandro

Climate Action Plan (CAP), adopted by City Council in December 2009, which includes policies to develop comprehensive energy efficiency programs for the residential and commercial/industrial sectors. The CAP specifically includes action item 3.1.2 to “Adopt a third-party or municipal financing program for residential energy efficiency projects” and 3.3.1 to “Adopt a third-party or municipal financing program for solar (PV and solar hot water) and other renewable technology projects.”

### **Program Comparison**

Increasing the number of PACE providers operating in San Leandro would result in a diverse and competitive local market. Authorizing these providers would not limit City Council’s ability to consider additional providers in San Leandro at a later date; however, given the greatly expanded PACE choices proposed below, staff does not anticipate recommending additional PACE providers for approval in the near future.

An overview of each of the proposed PACE programs follows.

#### California HERO Program

The California HERO Program has primarily served residential projects, and is the largest provider by volume of projects completed, financing provided, and number of participating communities. More than 404 cities and counties have adopted the program since its launch in 2010, including the Alameda County cities of Albany, Berkeley, Dublin, Hayward, Oakland, and Union City, as well as unincorporated Alameda County. As of May 2016, the program has completed more than 61,636 building improvement projects. The economic activity associated with these projects includes 12,300 jobs created and more than 2.51 million tons of CO2 emissions reductions annually.

The California HERO program requires City Council approval of associate membership in the Western Riverside Council of Governments JPA, which administers the program. This membership authorizes the program to provide services in San Leandro and is limited in scope to the PACE program only.

#### Figtree PACE Program

The Figtree PACE Program has primarily served commercial, industrial, and multifamily properties, but is launching a single-family residential service later this year. Since its launch in 2011, 149 cities and counties in California have adopted the program, including the Alameda County cities of Dublin, Hayward, Oakland, and Union City, as well as unincorporated Alameda County. More than \$300 million in financing has been approved for commercial projects. The program has 75 contractors providing service in Alameda County.

The Figtree PACE Program requires membership in the California Enterprise Development Authority (CEDA), of which San Leandro is already a member. Furthermore, because Alameda County has already adopted the Figtree PACE Program, the City Council is only required to pass a resolution of consent to opt into the County Figtree PACE Program.

#### Ygrene PACE Program

The Ygrene PACE Program serves residential and commercial projects, and is the only provider originating in multiple states. In California, over 180 cities and counties have adopted

the program since its launch in 2013, including Alameda County, cities of Hayward, Oakland, and Union City. To date, the program has approved funding of more than \$1.1 Billion and has certified 2,532 contractors in California.

The Ygrene PACE Program requires City Council approval of membership in the California Home Finance Authority (CHF), which administers the program. Membership in this JPA authorizes the program to provide services in San Leandro and is limited in scope to the PACE program only. Because of the unique nature of the CHF YgreneWorks program, two Resolutions are required for authorization. The first Resolution would make all properties in San Leandro eligible to participate in CHF's Community Facilities District (CFD) for PACE financing as authorized under SB 555 (2011). The second Resolution would make all properties in San Leandro eligible to participate in CHF's Contractual Assessment program for PACE authorized under AB 811 (2009), which is similar to the other PACE programs presented for City Council consideration. As with the other programs, the City Council's approval of the YgreneWorks program is limited to making the PACE financing option available to individual San Leandro property owners who voluntarily decide to use it.

CSCDA Open PACE Program: CaliforniaFIRST (Previously Authorized), AllianceNRG, and PACEfunding, CleanFund Commercial PACE Capital, and Spruce Finance

CSCDA Open PACE launched in 2015 and operates under AB 811. It is sponsored by the California Statewide Communities Development Authority (CSCDA), of which San Leandro is a member. CSCDA founded Open PACE with the goal of creating a platform to vet and pre-qualify PACE providers so that local governments only need to pass a single resolution to authorize multiple programs.

Currently, CSCDA Open PACE has pre-qualified five PACE programs - CaliforniaFIRST (which the City of San Leandro already participates in - see details under "BACKGROUND"), AllianceNRG, PACEfunding, CleanFund Commercial PACE Capital, and Spruce Finance. Any additional PACE programs that are qualified under Open PACE after the adoption of the CSCDA Open PACE resolution by the City will be automatically authorized to operate within San Leandro.

- AllianceNRG, established in 2015, serves residential and commercial projects through a collaboration of Leidos Engineering and CounterPointe Energy Solutions.
- PACEfunding was added to the CSCDA's Open PACE network in September 2015. PACEfunding is the first private PACE program manager to partner with a US consumer lending bank - Admirals Bank. The program currently serves the residential market and is anticipating expanding to the commercial sector in 2016.
- CleanFund Commercial PACE Capital was added to CSCDA's Open PACE network in April, 2016 and provides long-term financing to commercial properties. CleanFund's PACEDirect™ flexible financing program enables property owners to install modern energy and water technology with no up-front cost, increasing property cash flows and value. CleanFund's SolarPACE™ financing specifically addresses the demands of commercial property owners enabling immediate positive cash flow, with a financing term of up to 30 years.

- Spruce Finance was added to CSCDA's Open PACE network in April 2016 and is a technology-enabled finance company serving the residential solar, energy and water efficiency markets in the United States. Spruce was created via the combination of Clean Power Finance ("CPF"), a solar financing market place, and Kilowatt Financial ("Kilowatt"), an investor in solar and energy efficiency financing for consumers. Spruce's mission is to provide financing that empowers consumers to improve their environment.

In California, 98 cities and counties have approved the Open PACE suite of programs, including Alameda County, Albany, Berkeley, El Cerrito, Hayward, Oakland, Piedmont, and Union City.

### **ABAG Regional Collaborative Services Agreement**

The PACE provider's primary relationship is with the JPA partner (who issues bonds or related financial instruments to PACE providers, and provides oversight of the financing and administrative activities). As such, cities have limited control over local PACE activities. In order to safeguard consumer interests and promote program success, ABAG and the Bay Area Regional Energy Network developed the "Regional Collaborative Services Agreement" (RCSA), which establishes the terms, conditions and roles each residential PACE provider will follow when operating in ABAG territory (the RCSA does not apply to commercial PACE programs). While the Agreement is between ABAG and PACE providers, the language of the agreement states that it also applies to actions of the PACE provider in participating cities and towns that choose to authorize PACE programs.

Features of the ABAG agreement include:

- Designates ABAG as the liaison to the residential PACE providers locally;
- Requires all residential PACE providers to have clearly visible disclosures regarding the FHFA's policies on residential PACE programs
- Requires all residential PACE providers to participate in the state's PACE Loss Reserve program;
- Limits claims that residential PACE providers (or their designated contractors) can make to applicants regarding the tax deductibility of PACE assessments;
- Requires data sharing between the residential PACE providers and participating cities to monitor program performance locally and report out to local stakeholders; and
- Requires residential PACE providers to accept responsibility for negligence in administering PACE programs.

At this time, the following residential PACE providers have signed on to the RCSA with ABAG:

- Western Riverside Council of Governments (California HERO Program);
- Figtree Financing (Figtree PACE Program);
- Ygrene Energy Fund California LLC (Ygrene PACE Program);
- CounterPointe Energy Solutions (CA) LLC (AllianceNRG Program); and
- PACE Funding Group LLC.

Staff has attached a blank "Acknowledgement Addendum to the Association of Bay Area

Governments” (ABAG) for City Council to review and give the City Manager authorization to sign on its behalf, along with one copy of the fully executed Regional Collaborative Services Agreement by the Western Regional Council of Governments (WRCOG) as an example of the agreement that all of the above PACE providers have signed. The City Manager will be signing an Acknowledgement Addendum for each of the above residential PACE providers.

### **Recommendation**

In order to create a competitive PACE marketplace with multiple providers that will expand options for home and business owners, stimulate local job development, and help to support the City’s Climate Action Plan, staff recommends that the City Council adopt the attached draft Resolutions to join the following PACE programs:

- California HERO Program, administered by the Western Regional Council of Governments;
- Figtree PACE Program, administered by Figtree Financing;
- Ygrene PACE Program, administered by the California Home Finance Authority (CHF); and
- CSCDA Open PACE, a joint provider organization administered by California Statewide Communities Development Authority (CSCDA), offering CaliforniaFIRST, AllianceNRG, PACE Funding, Spruce Finance and CleanFund programs.

Staff also recommends that the City Council authorize the City Manager to approve and sign an Acknowledgement Addendum to the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA), as executed between ABAG and the following residential PACE providers:

- Western Riverside Council of Governments (California HERO Program);
- Figtree Financing (Figtree PACE Program);
- Ygrene Energy Fund California LLC (Ygrene PACE Program);
- CounterPointe Energy Solutions (CA) LLC (AllianceNRG Program); and
- PACE Funding Group LLC.

### **Current Agency Policies**

In December 2009, the City Council adopted the San Leandro Climate Action Plan (CAP) which includes a series of measures that the City can implement in order to reach its greenhouse gas emissions target of 25% below 2005 levels by the year 2020. Of these, Action 3.1.2 states that the City should “Adopt a third-party or municipal financing program for residential energy efficiency projects” and Action 3.3.1 states that the City should “Adopt a third-party or municipal financing program for solar (PV and solar hot water) and other renewable technology projects.”

### **Previous Actions**

In February 2010, the City Council approved the City of San Leandro’s participation in the CaliforniaFIRST Program, offered by the California Statewide Communities Development Authority (CSCDA or California Communities). CSCDA is a California joint powers authority

(JPA), of which the City is already a member.

### **Applicable General Plan Policies**

The City's General Plan, adopted in 2002, includes a series of goals and policies related to resource conservation and environmental sustainability. The proposed municipal financing for energy efficiency and renewable energy and residential retrofit programs are both in conformance with the General Plan policies that encourage energy and water conservation and better air quality. Chapter 5 (Open Space, Parks and Conservation), states that "(a)nother mission of this Element is to promote conservation practices among San Leandro residents and businesses. Three areas are emphasized: water conservation, recycling, and energy conservation." (General Plan, page 5-1)

Furthermore, the General Plan supports the proposed programs with the following Policies and Actions, among others:

**Policy 26.06 - Intergovernmental Coordination** *Coordinate with the appropriate regional, state and federal agencies and other organizations in their efforts to conserve and enhance ecological resources in San Leandro. Refer local projects to these agencies as required for their review and comment.*

**Policy 28.01 - Conservation Advocacy** *Strongly advocate for increased energy conservation by San Leandro residents and businesses, and ensure that the City itself is a conservation role model.*

**Policy 28.02 Planning and Building Practices** *Encourage construction, landscaping, and site planning practices that minimize heating and cooling costs and ensure that energy is efficiently used. Local building codes and other City regulations and procedures should meet or exceed state and federal standards for energy conservation and efficiency.*

**Policy 28.03 Weatherization** *Promote the weatherization and energy retrofitting of existing homes and businesses, including the development of solar space heating and water heating systems, and the use of energy-efficient lighting, fixtures and appliances.*

### **Environmental Review**

The proposed resolutions are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) because the resolutions are not a "project" as that term is defined in Title 14, California Code of Regulations, Section 15378, because the program does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment.

### **Legal Analysis**

The proposed residential PACE provider agreements and the ABAG Regional Agreement for Collaborative Services were reviewed and approved as to form by the City Attorney's Office.

### **Fiscal Impacts**



The capital for the PACE programs is from private sources and the transactions are between program administrators and building owners. As such, the City of San Leandro will incur no cost or risk associated with program activities. The City will provide no administrative support or marketing for the programs, which are conducted by the program administrators. Authorization by the City Council is necessary for the programs to conduct business in the City of San Leandro, per the requirements of AB 811 and SB 555.

## **ATTACHMENTS**

### **Attachments to Staff Report**

- Exhibit A: Memorandum regarding the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA)
- Exhibit B: Model Acknowledgement Addendum to the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA)
- Exhibit C: Fully Executed Regional Collaborative Services Agreement (RCSA) signed by WRCOG/HERO

### **Attachments to Resolutions**

- Attached to Resolution to Join WRCOG and Participate in California HERO:
  - Exhibit A: JPA Agreement
- Attached to Resolution to Join CEDA and Participate in Figtree:
  - Exhibit A: CEDA Resolution of Intention
  - Exhibit B: Indemnification Agreement
- Attached to Resolution to Join CHFA and Participate in Ygrene 555:
  - Exhibit A: JPA Agreement
- Attached to Resolution to Join CHFA and Participate in Ygrene 811:
  - Exhibit A: JPA Agreement

**PREPARED BY:** Sally Barros, Principal Planner, Community Development Department



*“Bay Area communities working together for a sustainable energy future.”*

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## Memorandum

To: ABAG Member Jurisdictions  
From: Jennifer K. Berg, BayREN Program Manager  
Re: Regional Collaborative Services Agreement for Residential PACE  
Date: April 6, 2016

This memo is provided to explain the Association of Bay Area Governments (ABAG) Regional Collaborative Service Agreement (RCSA) for residential PACE programs (Property Assessed Clean Energy) in the nine county Bay Area region.

### **BayREN and PACE**

The Association of Bay Area Governments (ABAG) serves as the Program Administrator for the Bay Area Regional Energy Network (BayREN), a consortium of the nine counties that work together to develop and implement innovative energy efficiency programs, funded primarily by California ratepayers. PACE programs allow qualified property owners to obtain affordable, long-term financing for energy efficiency, renewable energy, and water conservation improvements, and repay it through their secured property tax bills. BayREN was originally authorized to run a *commercial* PACE Program, with a focus on providing outreach and education to help commercial sector stakeholders take advantage of this powerful new financing mechanism.

In the past few years, residential PACE has made resurgence in California, mainly due to demonstrated success in Southern California, and by the establishment of the State’s [PACE Loss Reserve](#) program. In order to help BayREN member jurisdictions better prepare joining third-party administered residential PACE programs, in 2015, ABAG issued an RFI to active PACE administrators to help identify and institutionalize key best practices through the use of the RCSA.

### **Regional Collaborative Services Agreement (RCSA)**

The RCSA is intended to ensure consistent application of key programmatic elements (“best practices”) considered to be critically important for local government partners. These include: consumer protections and disclosures; local government risk mitigation and indemnification; co-marketing complementary energy efficiency programs; contractor and project quality assurance; and performance tracking, data, and reporting.

ABAG will execute the RCSA with active PACE administrators; member jurisdictions can then sign an “ABAG Member Acknowledgement Form” to the RCSA in order for these terms to apply to PACE activities in their community, and return the executed Acknowledgment to ABAG. This procedure will result in greater efficiency and help streamline the process for ABAG member jurisdictions.

**IMPORTANT NOTE:** Local jurisdictions will still need to pass required resolution(s) to join a residential PACE program for their own city or town. While opting into an existing program or programs is simpler than setting up your own Program, you are giving up some control over program activities. With the RCSA, jurisdictions can have confidence that Programs will adhere to high program standards; provide relevant data for local program performance tracking; and are minimizing risk for community members and the local agency.

For more information, please contact Jennifer Berg, [jennyb@abag.ca.gov](mailto:jennyb@abag.ca.gov).

TO: \_\_\_\_\_ PACE Program

IN WITNESS WHEREOF, the City of San Leandro (“Participating Entity”) adopts the Agreement for Collaborative Services (“Agreement”), attached hereto as Exhibit A and incorporated herein, establishing operating procedures for \_\_\_\_\_ PACE Program within the jurisdiction of the Participating Entity.

City of San Leandro:

By: \_\_\_\_\_

Chris Zapata  
City Manager

Date: \_\_\_\_\_

Method and Place of Giving Notice. All notices to the Participating Entity shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

Sally Barros, Principal Planner  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
(510) 577-3458  
sbarros@sanleandro.org

**AGREEMENT FOR COLLABORATIVE SERVICES**  
FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING

This Agreement for Collaborative Services ("Agreement"), dated as of , 2016 ("Effective Date") is by and among the Association of Bay Area Governments (hereinafter "ABAG"), *Western Riverside Council of Governments* (hereinafter "PACE Provider"), as an entity administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model and any Participating Entity, as defined in Section 1.3 below, that adopts this Agreement.

RECITALS

**WHEREAS**, ABAG is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

**WHEREAS**, ABAG as Program Administrator for the Bay Area Regional Energy Network (BayREN), works closely with 101 cities in the nine county Bay Area region (ABAG territory) to develop and implement innovative energy efficiency programs, including supporting commercial and residential Property Assessed Clean Energy (PACE) programs; and

**WHEREAS**, the BayREN offers programs, technical resources and education for energy upgrades and retrofits; and

**WHEREAS**, the objective of the BayREN is to help property owners save energy, save money, and live comfortably; and

**WHEREAS**, the BayREN seeks to assist local governments to understand all aspects of partnering with PACE Providers in order to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, contractor programs, and financing options; and

**WHEREAS**, the PACE Provider is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

**WHEREAS**, the PACE Provider will provide support and resources to any Participating Entity as requested related to education, outreach and development of the energy upgrade industry and trades; and

**WHEREAS**, the PACE Provider will support, align and integrate its efforts with the community-wide goals for job creation, resource demand reduction, and renewable energy generation; and

**WHEREAS**, the PACE Provider will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

**WHEREAS**, the PACE Provider will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the Participating Entity's County Tax Collector's Office; and

**WHEREAS**, this Agreement does not include any financial arrangements between the PACE Provider, ABAG and the Participating Entity adopting this Agreement, nor does it preclude any separate contracts, contract terms for services or support; and

**WHEREAS**, the purpose of this Agreement is to set forth the mutual understandings between ABAG and the PACE Provider and to establish basic operating procedures for any PACE provider operating within the ABAG territory, and any Participating Entity that adopts this agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

## A G R E E M E N T

### **1** Definitions.

- 1.1 **"Eligible improvement"** is a technology, product or tool officially approved by the PACE provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure improvements that will be permanently affixed to real property, and any additional improvements deemed eligible in the future by the California Legislature and/or the California Judiciary.
- 1.2 **"PACE Provider"** is an entity participating in ABAG territory administering a program providing Property Assessed Clean Energy (PACE) financing.

- 1.3 **“Participating Entity”** is any city, town, county or the City and County of San Francisco located within ABAG’s geographical boundaries that adopt this Agreement.
- 1.4 **“Participating Contractor”** is any contractor that has agreed to, and abides, by the terms and conditions of the PACE Provider’s contractor standards.
- 1.5 **“Property Assessed Clean Energy (PACE) Financing”** is a means of financing distributed generation, renewable energy sources, energy and water efficiency improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments and/or special taxes, utilizing either California Assembly Bill 811 (Levine, 2008) (“AB 811”), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) (“SB 555”), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.
- 1.6 **“Work”** as defined throughout this Agreement is the collaborative, non-competitive, effort between the PACE Provider and ABAG to support the citizens of ABAG member jurisdictions in completing water, energy efficiency upgrades, and the installation of renewable energy generating improvements.

## **2 Scope of Work / Collaboration.**

- 2.1 PACE Provider's Specified Services. The PACE Provider will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555.
- 2.2 Performance Standard. PACE Provider shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. ABAG has relied upon the professional ability and expertise of PACE Provider as a material inducement to enter into this Agreement. PACE Provider hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws. If ABAG is concerned that any of PACE Provider's work is not in accordance with the level of competency and standard of care described herein, ABAG shall have the right to do any or all of the following: (a) require PACE Provider to

discuss with Participating Entity and/or to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies available to ABAG at law or in equity.

Financing Provision Requirements.

The PACE Provider will:

- 2.3.1 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.
- 2.3.2 Provide summary of financing details (including assessment or special tax amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing.
- 2.3.3 For residential properties, require an applicant's acknowledgment of the Federal Housing Finance Agency position on PACE by a separate signature/initial acknowledgement, in a Residential Disclosure Signature Form that is substantially similar in content to Attachment 1(a) or 1(b), as approved by ABAG.
- 2.3.4 Provide training to contractors and information to property owners on the availability of rebates (for all utility and generation types), including and not limited to city and county rebate programs, BayREN programs, PG&E programs, and other such offerings. (For information about local programs, the contractor and/or home owner may be directed to the BayREN Home Upgrade Advisor at 866-878-6008.)
- 2.3.5 Require that applicable building permits are obtained for all improvements in Participating Entities.
- 2.3.6 Verify that all property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever is shorter.
- 2.3.7 Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project and not recommend that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments.
- 2.3.8 Not represent that the full assessment is tax deductible.
- 2.3.9 Have a consistent plan for removal of assessments at end of repayment term, prepayment and/or in the event of program closure.



#### 2.4 Financial Policies.

The PACE Provider will:

- 2.4.1 For programs offering residential PACE financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.
- 2.4.2 Notify ABAG six months in advance if funding capacity available from the PACE Provider to prospective PACE customers in the Participating Entity will fall below the amount dispersed in the previous six months of operation.
- 2.4.3 Notify ABAG of any foreclosure action as a result of a default in the payment of a PACE assessment on property within ABAG's geographical boundaries, where the PACE assessment was originated by the PACE Provider.

#### 2.5 Documents, Data, and Information Policies.

The PACE Provider will:

- 2.5.1 Provide to Participating Entity (for internal evaluation purposes only and not for distribution to any third party or for marketing purposes, other than as required by law) by request of Participating Entity, electronic access to the name, business name, and California State Contractors license number of participating contractors of the PACE Provider's program whose business address is located in the requesting Participating Entity or who conduct business in the requesting Participating Entity.
- 2.5.2 Retain completed Residential Disclosure (hardcopy or electronic) on file for duration of assessment, and furnish to Participating Entity upon request.
- 2.5.3 Provide upon request either direct real time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) to Participating Entity by request for internal evaluation purposes only (and not for distribution to any third party, including, without limitation, utility companies, services providers and equipment manufacturers or for marketing purposes) that includes the following information for each assessment:
  - a. *Required data:*
    - i. Assessor's Parcel Number (APN) of the property

- ii. Dollar amount financed (the amount of the assessment and/or special tax)
- iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed as captured by Participating Contractor
- iv. Listing of all renewable generation improvements installed and the solar STC-DC rating in watts or kilowatts as captured by Participating Contractor
- v. Estimated energy and water savings (in appropriate units) associated with the project
- vi.

*b. If available (in the aggregate):*

- i. Amount of rebate or incentive dollars associated with the project (not financed) and the name of the program
- ii. How the customer heard about PACE financing
- iii. Why the customer selected PACE over other financing instruments available
- iv. Why the customer selected their final PACE Provider over the other members

The Participating Entity will:

Maintain the privacy and security of data received from PACE Provider. Participating Entity shall comply with all applicable state and federal laws, regulations and applicable California Public Utilities Commission regulations. Participating Entity may only provide reports relating to Section 2.5.3(a)(ii)-(v) for public distribution that aggregate the data such that individual customer information cannot be identified, unless such customer has authorized written release of individual customer information. A Participating Entity shall not share with any third party the data and reports provided by a PACE Provider pursuant to Section 2.5.3(b) (if any).

2.5.4 Provide the documents required for participation in the PACE Providers' PACE Financing program to Participating Entity officials.

2.5.5 Provide support to Participating Entity's staff to facilitate adoption of required participation documents.

2.6 ABAG will encourage Participating Entity to offer staff resources and support to bring forward to their respective boards or councils the documents

provided by the PACE Provider required for participation in the PACE Provider's PACE financing product.

## 2.7 Branding / Marketing Requirements.

The Parties will:

- 2.7.1 Collaborate on any local and/or regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners.
- 2.7.2 Represent the role of ABAG as the local neutral third party, not-for-profit, public service agency supporting the public through the upgrade process, with the following message to consumers: Among the financing products available, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects.

The PACE Provider will:

- 2.7.3 Provide assistance to ABAG and any Participating Entity signing this Agreement for: (1) coordinating and implementing the integration of the PACE Provider into applicable BayREN and other relevant energy efficiency programs; and (2) support of contractor training.
- 2.7.4 Provide specific training for participating contractors engaged with local PACE programs using the PACE Provider's financing product, materials, collateral, tools, and associated software, through training offered directly from the PACE Provider.
- 2.7.5 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the PACE Provider's financing option into the websites of any Participating Entity requesting such assistance.
- 2.7.6 Provide training and resources to any Participating Entity as needed to build understanding and support for use of the PACE financing product

ABAG will encourage ABAG members to:

- 2.7.7 Present with impartiality the financing products of the PACE Providers in all venues to the public.
- 2.7.8 Present marketing collateral of all financing products (where applicable) with impartiality in education and outreach materials and events

## 2.8 PACE Providers Responsibilities Regarding Participating Contractor.

PACE Providers will:

- 2.8.1 Require that contractors have the appropriate California State License Board (CSLB) license in good standing
- 2.8.2 Require, in accordance with California State License Board requirements, that contractors' bonding is in good standing
- 2.8.3 Require, in accordance with California State License Board requirements, that contractors have appropriate Workers' Compensation coverage
- 2.8.4 Require that contractors have a minimum of \$1M of commercial general liability insurance
- 2.8.5 NOT endorse, recommend, or refer any specific contractor other than contractors who are to PACE Provider's knowledge, in good standing with CSLB, are insured and meet material program eligibility requirements
- 2.8.6 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor
- 2.8.7 NOT make any warranty regarding the contractor's work or products purchased from contractors provided
- 2.8.8 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products
- 2.8.9 Comply with provisions of Section 2.3.7 of this Agreement.
- 2.8.10 Via trainings and customer complaint system, require that contractors and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of ABAG or any Participating Entity, or claim association or affiliation with ABAG or any Participating Entity.
- 2.8.11 Independently engages the Participating Entity's Tax Collector for administration of property tax assessments placed through its financing product.

**3 Payment.** This Agreement does not include any financial arrangements between the PACE Provider and ABAG, nor does it preclude any separate contracts for services or support.

**4 Term of Agreement.** The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

## **5 Termination.**

- 5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, ABAG, PACE Provider, or any Participating Entity shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party to this Agreement; provided that a party's termination of this Agreement under this section shall not automatically terminate any other agreement or contract between the other parties.
- 5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the PACE Provider fail to uphold any of its obligations under this Agreement in a material way, within the time and in the manner herein provided, or otherwise materially violate any of the terms of this Agreement, ABAG or a Participating Entity may, after providing the PACE Provider with a thirty (30) day cure period, immediately terminate this Agreement by giving PACE Provider written notice of such termination, stating the reason for termination; provided that the termination of this Agreement shall not automatically terminate any other agreement or contract between or among the parties.
- 5.3 Delivery of Data and Information upon Termination. In the event of termination, PACE Provider, within 14 days following the date of termination, shall deliver to the extent legally permitted to Participating Entity all raw data and information in an editable electronic format as outlined in and subject to the terms of Section 2.5, Document, Data, and Information Policies.
- 5.4 Authority to Terminate. The Executive Director of ABAG has the authority to terminate this Agreement on behalf of ABAG
- 5.5 Effect of Termination. Termination of this Agreement by ABAG or Participating Entity shall not affect the ability to levy and collect assessments and the PACE Provider's ability to issue bonds for assessment contracts located within the jurisdiction of such entity which have been entered into prior to the date of termination.
- In the event of termination pursuant to this Section 5 by ABAG, ABAG may notify all Participating Entities of said termination.

## **6 Hold Harmless, Indemnity and Waiver of Subrogation.**

To the fullest extent allowed by law, PACE Provider shall defend, indemnify, save harmless and waive subrogation against the ABAG, and its members, elected and appointed officials, officers and employees (Indemnitees) against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from

all acts or omissions to act of PACE Provider or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses resulting from an intentional act or the gross negligence of an Indemnitee.

This section shall in no event be construed to require indemnification by PACE Provider to a greater extent than permitted under the public policy or laws of the State of California. These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in this Agreement. These defense and indemnification obligations shall survive the termination or expiration of the contract for the full period of time permitted by law.

7 **Insurance Requirements.** PACE provider shall obtain and maintain insurance as required in Attachment 2.

8 **Prosecution of Work.** The execution of this Agreement shall constitute PACE Provider's authority to proceed immediately with the performance of this Agreement.

9 **Representations of PACE Provider.**

9.1 **Standard of Care.** ABAG and Participating Entity have relied upon the professional ability and training of PACE Provider as a material inducement to entering into this Agreement. PACE Provider hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws.

9.2 **Status of PACE Provider.** The parties intend that PACE Provider, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. PACE Provider is not to be considered an agent or employee of ABAG or of any Participating Entity and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits that ABAG or the Participating Entity provides its employees.

9.3 **Conflict of Interest.** PACE Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in

any manner or degree with the performance of its services hereunder. PACE Provider further covenants that in the performance of this Agreement no person having any such interests shall be employed.

9.4 Statutory Compliance. PACE Provider agrees to comply with all federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.5 Nondiscrimination. Without limiting any other provision hereunder, PACE Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.6 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of PACE Provider.

**10 Demand for Assurance**. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits the parties' right to terminate this Agreement pursuant to Section 5, Termination.

**11 Assignment and Delegation**. No party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented; provided however, that





- 13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. PACE Provider and ABAG acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Each party hereto acknowledges that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Alameda.
- 13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

- 13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- 13.10 Counterparts. This Agreement may be executed in two or more counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument. The delivery by facsimile or electronic mail of an executed copy of this Amendment shall be deemed valid as if an original signature was delivered

Continued on next page:

IN WITNESS WHEREOF, the ABAG and the PACE Provider hereto have executed this Agreement as of the Effective Date.

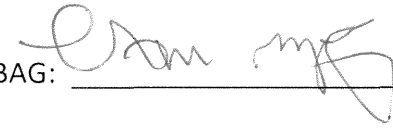
PACE PROVIDER: Western Riverside  
Council of Governments

By: 

Name: Rick Bishop

Title: Executive Director

Date: March 21, 2016

ABAG: 

By: \_\_\_\_\_

Name: Ezra Rapport

Title: Executive Director

Date: 3/30/16


APPROVED AS TO FORM FOR ABAG

Date: 3/30/16

By:   
Kenneth Moy, ABAG Counsel

APPROVED AS TO FORM FOR PACE PROVIDER

Date: March 21, 2016

By:   
Mrunal Shah, Bond Counsel to  
Western Riverside Council of  
Governments

ATTACHMENT 1(a)

**ALERT: Fannie Mae/Freddie Mac Instructions for Lenders**

**SINGLE FAMILY HOME OWNERS:** In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs such as \_\_\_\_\_. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family home lenders, instruct lenders to treat energy assessments as “loans” instead of “assessments.”

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac “will not purchase mortgage loans secured by properties with an outstanding PACE obligation.”

**These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer’s lender may refuse to finance the buyer’s first mortgage loan unless the assessment is paid off.** We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

I/We have read the above statement. All property owners on title must initial below:

<i>Initials</i>	<i>Date</i>	<i>Initials</i>	<i>Date</i>
<i>Initials</i>	<i>Date</i>	<i>Initials</i>	<i>Date</i>

Continued on next page:

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

- <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf>
- <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf>
- <http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx>
- <http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx>
- <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf>
- <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1020.pdf>

ATTACHMENT 1(b)

**BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, FANNIE MAE AND FREDDIE MAC, THE OWNER OF A SIGNIFICANT PORTION OF ALL HOME MORTGAGES, STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY THE AUTHORITY. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.**

I/We have read the above statement. All property owners on title must initial below:

_____	_____	_____	_____
<i>Initials</i>	<i>Date</i>	<i>Initials</i>	<i>Date</i>
_____	_____	_____	_____
<i>Initials</i>	<i>Date</i>	<i>Initials</i>	<i>Date</i>

## ATTACHMENT 2

Insurance Requirements. PACE Provider shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of five (5) years following the completion of this project. PACE Provider shall provide a copy of section 21 of this contract and these insurance requirements to its insurance broker or insurer to confirm compliance. In the event PACE Provider fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by PACE Provider. The limits of insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage  
(occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1  
(any auto).

Workers' Compensation insurance as required by the State of California and Employer's  
Liability Insurance.

Errors and Omissions Liability insurance appropriate to the PACE Provider's profession.  
Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. PACE Provider shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and  
property damage. If Commercial General Liability Insurance or other form with a  
general aggregate limit is used, either the general aggregate limit shall apply separately  
to this project/location or the general aggregate limit shall be twice the required  
occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Errors and Omissions Liability: \$1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions  
must be declared to and approved by ABAG. The insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the Indemnitees; or the PACE Provider shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of PACE Provider; completed operations; or automobiles owned, leased, hired or borrowed by PACE Provider.

(ii) For any claims related to this project, the PACE Provider's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of PACE Provider's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, PACE Provider shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or PACE Provider.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. PACE Provider shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified



copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.



# City of San Leandro

Meeting Date: June 6, 2016

## Resolution - Council

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**File Number:** 16-281

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Consenting to the Inclusion of Properties Within the City's 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 the Western Riverside Council of Governments Joint Powers Agreement Related Thereto (joins the Western Riverside Council of Governments and participates in the California HERO PACE Program)

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**WHEREAS**, the Western Riverside Council of Governments ("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 "Act") and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the "Authority JPA"); and

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

**WHEREAS**, City of San Leandro (the "City") is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protecting the environment, and reversal of climate change; and

**WHEREAS**, in Chapter 29, the Legislature authorizes cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

**WHEREAS**, installation of such Improvements by property owners within the

jurisdictional boundaries of the counties and cities that are participating in the California HERO Program would promote the purposes cited above; and

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

**WHEREAS**, Authority has authority to establish the California HERO Program, which will be just such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into April 1, 1991, as amended to date, and the Amendment to Joint Powers Agreement adding the City of San Leandro as an Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services within the City (the "JPA Amendment"), by and between Authority and the City, a copy of which is attached as Exhibit "A" hereto, to assist property owners within the incorporated area of the City in financing the cost of installing Improvements; and

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

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of San Leandro hereby finds, determines and declares as follows:

1. This City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the California HERO Program to finance the installation of Improvements.
2. This City Council consents to inclusion in the California HERO Program of all of the properties in the incorporated area within the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.
3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the California HERO Program and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent and be secured by such contractual assessments.
4. This City Council hereby approves the JPA Amendment and authorizes the execution thereof by appropriate City officials.
5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the California HERO Program within the City, and report back periodically to this

City Council on the success of such program.

6. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority Executive Committee.

**Exhibit A**

Joint Powers Amendment

**AMENDMENT TO THE JOINT POWERS AGREEMENT  
ADDING THE CITY OF SAN LEANDRO AS  
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 \_\_\_\_\_, 2016, by City of San Leandro (“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 Act of 1911, being Division 7 of the California Streets and Highways Code (“Chapter 29”) authorizes 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 certain 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 county throughout the state; and

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

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

WHEREAS, pursuant to the Joint Exercise of Powers Act, the Parties are approving this JPA Agreement to allow for the provision of PACE services, including the operation of a PACE financing program, within the incorporated territory of City; and

WHEREAS, the JPA Amendment sets forth the rights, obligations and duties of City and Authority with respect to the implementation of the California HERO Program within the incorporated territory of City.

## **MUTUAL UNDERSTANDINGS**

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

### **A. JPA Amendment.**

1. The Authority JPA. City agrees to the terms and conditions of the Authority JPA, attached.

2. Associate Membership. By adoption of this JPA Amendment, City shall become an Associate Member of Authority on the terms and conditions set forth herein and the Authority JPA and consistent with the requirements of the Joint Exercise of Powers Act. The rights and obligations of City as an Associate Member are limited solely to those terms and conditions expressly set forth in this JPA Amendment for the purposes of implementing the California HERO Program within the incorporated territory of City. Except as expressly provided for by the this JPA Amendment, City shall not have any rights otherwise granted to Authority's Regular Members by the Authority JPA, including but not limited to the right to vote on matters before the Executive Committee or the General Assembly, the right to amend or vote on amendments to the Authority JPA, and the right to sit on committees or boards established under the Authority JPA or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee. City shall not be considered a member for purposes of Section 9.1 of the Authority JPA.

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

### **B. Implementation of California HERO Program within City Jurisdiction.**

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

2. Determination of Eligible Improvements. Authority shall determine the types of distributed generation renewable energy sources, energy efficiency or water conservation improvements, electric vehicle charging infrastructure or such other improvements as may be authorized pursuant to Chapter 29 (the "Eligible Improvements") that will be eligible to be financed under the California HERO Program.

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

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

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

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

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

### **C. Miscellaneous Provisions.**



1. Withdrawal. City or Authority may withdraw from this JPA Amendment upon six (6) months written notice to the other party; provided, however, there is no outstanding indebtedness of Authority within City. The provisions of Section 6.2 of the Authority JPA shall not apply to City under this JPA Amendment. City may withdraw approval for conduct of the HERO Program within the jurisdictional limits of City upon thirty (30) written notice to WRCOG without liability to the Authority or any affiliated entity. City withdrawal shall not affect the validity of any voluntary assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date of such withdrawal so long as the applications for such voluntary assessment contracts were submitted to and approved by WRCOG prior to the date of City's notice of withdrawal.

2. Mutual Indemnification and Liability. Authority and City shall mutually defend, indemnify and hold the other party and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of the willful misconduct or negligent acts, errors or omissions of the indemnifying party or its directors, officials, officers, employees and agents in connection with the California HERO Program administered under this JPA Amendment, including without limitation the payment of expert witness fees and attorneys fees and other related costs and expenses, but excluding payment of consequential damages. Without limiting the foregoing, Section 5.2 of the Authority JPA shall not apply to this JPA Amendment. In no event shall any of Authority's Regular Members or their officials, officers or employees be held directly liable for any damages or liability resulting out of this JPA Amendment.

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

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

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

Authority:  
Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor. MS1032  
Riverside, CA 92501-3609  
Att: Executive Director

City:  
City of San Leandro  
34009 Alvarado-Niles Road  
San Leandro, CA 94587  
Att: City Manager

6. Entire Agreement. This JPA Amendment, together with the Authority JPA, constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This JPA Amendment supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

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

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

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

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

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

12. Headings. The paragraph headings used in this JPA Amendment are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

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

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

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

**[SIGNATURES ON FOLLOWING PAGES]**

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: \_\_\_\_\_  
Executive Committee Chair  
Western Riverside Council of Governments

Date: \_\_\_\_\_

CITY OF SAN LEANDRO

By: \_\_\_\_\_  
Chris Zapata  
City Manager  
City of San Leandro

Date: \_\_\_\_\_



# City of San Leandro

Meeting Date: June 6, 2016

## Resolution - Council

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**File Number:** 16-282 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Sally Barros  
Principal Planner

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Approving Associate Membership by the City in the California Enterprise Development Authority; Authorizing and Directing the Execution of an Associate Membership Agreement Relating to Associate Membership of the City in the Authority; Authorizing the City to Join the Figtree PACE Program; Authorizing the California Enterprise Development Authority of Conduct Contractual Assessment Proceedings and Levy Contractual Assessments Within the Territory of the City of San Leandro; and Authorizing Related Actions (joins the California Enterprise Development Authority and participates in the Figtree PACE Program)

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**WHEREAS**, the City of San Leandro, California (the "City"), is a municipal corporation duly organized and existing under the Constitution and the laws of the State of California; and

**WHEREAS**, the City, upon authorization of the City Council, may, pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 (the "JPA Law"), enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them; and

**WHEREAS**, the City and other public agencies wish to jointly participate in economic development financing programs for the benefit of businesses and nonprofit entities within their jurisdictions offered by membership in the California Enterprise Development Authority (the "CEDA") pursuant to an associate membership agreement and Joint Exercise of Powers Agreement Relating to the California Enterprise Development Authority (the "Agreement"); and

**WHEREAS**, under the JPA Law and the Agreement, CEDA is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of CEDA will not be the debts, liabilities or obligations of the City or the other members of the Authority; and

**WHEREAS**, the form of Associate Membership Agreement (the "Associate Membership Agreement") between the City and CEDA is attached; and

**WHEREAS**, the City is willing to become an Associate Member of CEDA subject to the provisions of the Associate Membership Agreement; and

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

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

**WHEREAS**, the City desires to allow the owners of property ("Participating Parcel") within its jurisdiction ("Participating Property Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

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

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

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

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

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

**WHEREAS**, the City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued

in connection with Figtree PACE.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of San Leandro hereby finds, determines and declares as follows:

**Section 1.** The City Council hereby specifically finds and declares that the actions authorized hereby constitute public affairs of the City. The City Council further finds that the statements, findings and determinations of the City set forth in the preambles above are true and correct.

**Section 2.** The Associate Membership Agreement presented to this meeting and on file with the City Clerk is hereby approved. The Mayor of the City, the City Manager, the City Clerk and other officials of the City are each hereby authorized and directed, for and on behalf of the City, to execute and deliver the Associate Membership Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3.** The officers and officials of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this resolution and the Associate Membership Agreement. All such actions heretofore taken by such officers and officials are hereby confirmed, ratified and approved.

**Section 4. Good Standing.** The City is a municipal corporation and in good standing.

**Section 5. Public Benefits.** On the date hereof, the City Council hereby finds and determines that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

**Section 6. Appointment of CEDA.** The City hereby appoints CEDA as its representative to (i) record the assessment against the Participating Parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the California Streets and Highways Code (commencing with Section 8500 et seq.) (the "Law"), (iii) prepare program guidelines for the operations of the Program and (iv) proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the California Government Code. The City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution.

**Section 7. Assessment Proceedings.** In connection with Figtree PACE, the City hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;

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

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

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

**Section 9. Foreclosure.** The City Council hereby acknowledges that the Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. The City Council hereby designates CEDA as its representative to proceed with collection and foreclosure of the liens on the defaulting properties within the District, including accelerated foreclosure pursuant to the Program Report.

**Section 10. Indemnification.** The City Council acknowledges that Figtree has provided the City with an indemnification agreement, as shown in Exhibit B, for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The City Council hereby authorizes the appropriate officials and staff of the City to execute and deliver the Indemnification Agreement to Figtree.

**Section 11. City Contact Designation.** The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Manager from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: Sally Barros, Sustainability Manager, (510) 577-3458, sbarros@sanleandro.org.

**Section 12. CEQA.** The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)( 4)).

**Section 13. Effective Date.** This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Figtree Energy Financing.

**Section 14. Costs.** Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.



**Exhibit A**

CEDA Resolution of Intention

**RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT  
AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION  
OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES,  
ENERGY EFFICIENCY, SEISMIC RETROFITS, ELECTRIC VEHICLE  
CHARGING INFRASTRUCTURE, AND WATER EFFICIENCY  
IMPROVEMENTS IN THE CITY OF SAN LEANDRO**

**WHEREAS**, the California Enterprise Development Authority (“CEDA”) is a joint powers authority authorized and existing pursuant to 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, by and 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, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

**WHEREAS**, CEDA has obtained authorization from the City of San Leandro (the “City”) to enter into contractual assessments for the financing of the installation of Authorized Improvements in the City; 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 herein, 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 County 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 including unincorporated territory within City Boundaries. A property owner located within a City within the City may enter into contractual assessments with CEDA only after such City has adopted a resolution to authorize participation in the PACE Program.

**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 are 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 the 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 the Board of Directors 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.
- (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.

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 City, 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 City 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:

\_\_\_\_\_  
Michelle Stephens, Assistant Secretary

**Exhibit B**

Indemnification Agreement

**INDEMNIFICATION AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF SAN LEANDRO AND**  
**FIGTREE COMPANY, INC.**

This Indemnification Agreement (the “Agreement”) is entered into by and between the City of San Leandro, a municipal corporation or political subdivision, 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

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

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

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



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

2. **Amendment/Interpretation of this Agreement.** This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

3. **Section Headings.** Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

4. **Waiver.** No waiver of any of the provisions of this Agreement shall be binding unless in the form of writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

5. **Severability and Governing Law.** If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

6. **Notices.** All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator

Figtree Company, Inc.  
9915 Mira Mesa Blvd., Suite 130  
San Diego, California 92131  
Attn: Chief Executive Officer

If to the City:

City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attn: City Manager

7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

8. **Effective Date.** This Agreement will be effective as of the date of the signature of City's representative as indicated below in the signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard Pio Roda  
City Attorney

City of San Leandro

By \_\_\_\_\_  
Name: Chris Zapata  
Title: City Manager

Date: \_\_\_\_\_

Figtree Company, Inc., a California corp.

By \_\_\_\_\_  
Name: Mahesh Shah  
Title: CEO

Date: \_\_\_\_\_



# City of San Leandro

Meeting Date: June 6, 2016

## Resolution - Council

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**File Number:** 16-283

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Sally Barros  
Principal Planner

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Consenting to Inclusion of Properties Within the City's Jurisdiction in the California Home Finance Authority Community Facilities District No. 2014-1 (Clean Energy) to Finance Renewable Energy Improvements, Energy Efficiency and Water Conservation Improvements and Electric Vehicle Charging Infrastructure and Approving Associate Membership in the Joint Exercise of Powers Authority Related Thereto (joins the California Home Finance Authority and participates in the Ygrene 555 PACE)

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**WHEREAS**, the California Home Finance Authority, a California joint powers authority, (the "Authority") has established the Community Facilities District No. 2014-1(Clean Energy) in accordance with the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code (the "Act") and particularly in accordance with sections 53313.5(l) and 53328.1(a) (the "District"); and

**WHEREAS**, the purpose of the District is to finance or refinance (including the payment of interest) the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure improvements permanently affixed to private or publicly-owned real property (the "Authorized Improvements"); and

**WHEREAS**, the Authority is in the process of amending the Authority Joint Powers Agreement (the "Authority JPA") to formally change its name to the Golden State Finance Authority; and

**WHEREAS**, the City of San Leandro is committed to development of renewable energy generation and energy efficiency improvements, reduction of greenhouse gases, and protection of the environment; and

**WHEREAS**, in the Act, the Legislature has authorized a parcel within the territory of the District to annex to the District and be subject to the special tax levy of the District only (i) if

the city or county within which the parcel is located has consented, by the adoption of a resolution by the applicable city council or county board of supervisors, to the inclusion of parcels within its boundaries in the District and (ii) with the unanimous written approval of the owner or owners of the parcel when it is annexed (the "Unanimous Approval Agreement"), which, as provided in section 53329.6 of the Act, shall constitute the election required by the California Constitution; and

**WHEREAS**, the City wishes to provide innovative solutions to its property owners to achieve energy efficiency and water conservation and in doing so cooperate with the Authority in order to efficiently and economically assist property owners in financing such Authorized Improvements; and

**WHEREAS**, the Authority has established the District, as permitted by the Act, the Authority JPA, originally made and entered into July 1, 1993, as amended to date, and the City, desires to become an Associate Member of the JPA by execution of the JPA Agreement, a copy of which is attached as Exhibit "A" hereto, to participate in the programs of the JPA and, to assist property owners within the incorporated area of the City in financing the cost of installing Authorized Improvements; and

**WHEREAS**, the City will not be responsible for the conduct of any special tax proceedings; the levy and collection of special taxes or any required remedial action in the case of delinquencies in the payment of any special taxes in connection with the District.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of San Leandro hereby finds, determines and declares as follows:

1. This City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the Authority CFD No. 2014-1 (Clean Energy) to finance the installation of the Authorized Improvements.

2. This City Council consents to inclusion in the Authority CFD No. 2014-1 (Clean Energy) of all of the properties in the incorporated area within the City and to the Authorized Improvements, upon the request of and execution of the Unanimous Approval Agreement by the owners of such properties when such properties are annexed, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.

3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the Authority CFD No. 2014-1 (Clean Energy) and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Authorized Improvements.

4. This City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by appropriate City officials of any necessary documents to effectuate such membership.

5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority CFD No. 2014-1 (Clean Energy) within the City, and report back

periodically to this City Council on the success of such program.

6. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority.

**Exhibit A**

JPA Agreement

**CALIFORNIA HOME FINANCE AUTHORITY AMENDED AND RESTATED  
JOINT EXERCISE OF POWERS AGREEMENT**

(Original date July 1, 1993 and as last amended and restated December 10, 2014)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”) is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

**RECITALS**

A. WHEREAS, the California Rural Home Mortgage Finance Authority (“CRHMFA”) was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “Act”). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. The most recent amendment to the Joint Exercise of Powers Agreement was on January 28, 2004.

B. WHEREAS, the Members of CRHMFA Homebuyers Fund desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

**1. Definitions**

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.



"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the nine-member Executive Committee.

"Authority" means California Home Finance Authority ("CHF"), formerly known as CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the nine-member Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or "RCRC" means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

## **2. Purpose**

The purpose of the Authority is to provide financing for the acquisition, construction, , improvement and rehabilitation of real property in accordance with

applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

### **3. Principal Place of Business**

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

### **4. Creation of Authority; Addition of Members or Associate Members**

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

### **5. Term and Termination of Powers**

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the

exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

## **6. Powers; Restriction upon Exercise**

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act..

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- . (1) executing contracts,
- . (2) employing agents, consultants and employees,
- . (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
- . (4) acquiring, holding or disposing of real or personal property wherever located, including property subject to mortgage,

- . (5) incurring debts, liabilities or obligations,
- . (6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,
- . (7) suing and being sued in its own name, and litigating or settling any suits or claims,
- . (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose
- . (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall

be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

## **7. Governing Board**

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b.

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c.

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish such committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of

the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

## **8. Meetings of the Board**

a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.

b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.

c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.

d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except

that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.

e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

## **9. Officers; Duties; Official Bonds**

a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.

b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve ex officio as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities

specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

#### **10. Executive Committee of the Authority**

##### a. Composition

The Authority shall appoint nine (9) members of its Board to serve on an Executive Committee.

##### b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

##### c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

#### **11. Disposition of Assets**

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

#### **12. Agreement Not Exclusive; Operation in Jurisdiction of Member**

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the terms of other agreements among the Members or Associate Members.

### **13. Conflict of Interest Code**

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

### **14. Contributions and Advances**

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

### **15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses**

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board,



replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

#### **16. Duties of Members or Associate Members; Breach**

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

#### **17. Indemnification**

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

#### **18. Immunities**

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

#### **19. Amendment**

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board.

Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

## **20. Withdrawal of Member or Associate Member**

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

## **20. Miscellaneous**

a. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. Construction. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. Approvals. Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. Jurisdiction; Venue. This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. Integration. This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. Severability. Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993 Amended and restated December 10, 1998 Amended and restated February 18, 1999 Amended and restated September 18, 2002 Amended and restated January 28, 2004 Amended and restated December 10, 2014

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

City of San Leandro, California

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Chris Zapata  
City Manager

Attest:

By: \_\_\_\_\_

Tamika Greenwood  
City Clerk

**AFTER EXECUTION, PLEASE SEND TO:**

Golden State Finance Authority  
(formerly California Home Finance Authority)  
1215 K Street, Suite 1650  
Sacramento, CA 95814

ATTACHMENT 1

CALIFORNIA HOME FINANCE AUTHORITY MEMBERS

As of December 10, 2014

Alpine County  
Amador County  
Butte County  
Calaveras County  
Colusa County  
Del Norte County  
El Dorado County  
Glenn County  
Humboldt County  
Imperial County  
Inyo County  
Lake County  
Lassen County  
Madera County  
Mariposa County  
Mendocino County  
Merced County  
Modoc County  
Mono County  
Napa County  
Nevada County  
Placer County  
Plumas County  
San Benito County  
Shasta County  
Sierra County  
Siskiyou County  
Sutter County  
Tehama County  
Trinity County  
Tuolumne County  
Yolo County  
Yuba County



# City of San Leandro

Meeting Date: June 6, 2016

## Resolution - Council

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**File Number:** 16-284

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Sally Barros  
Principal Planner

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Consenting to Inclusion of Properties Within the City's Jurisdiction in the California Home Finance Authority Program to Finance Renewable Energy Generation, Energy and Water Efficiency Improvements and Electric Vehicle Charging Infrastructure and Approving Associate Membership in the Joint Exercise of Powers Authority Related Thereto (joins the California Home Finance Authority and participates in the Ygrene 811 PACE Program)

---

**WHEREAS**, the California Home Finance Authority ("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 "Act") and the Joint Power Agreement entered into on July 1, 1993, as amended from time to time (the "Authority JPA"); and

**WHEREAS**, the Authority is in the process of amending the Authority JPA to formally change its name to the Golden State Finance Authority; and

**WHEREAS**, Authority has established a property-assessed clean energy ("PACE") Program (the "Authority PACE Program") to provide for the financing of renewable energy generation, energy and water efficiency improvements and electric vehicle charging infrastructure (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program; and

**WHEREAS**, City of San Leandro (the "City") is committed to development of renewable energy generation and energy and water efficiency improvements, reduction of greenhouse gases, and protection of the environment; and

**WHEREAS**, in Chapter 29, the Legislature has authorized cities and counties to assist

property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

**WHEREAS**, installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the Authority PACE Program would promote the purposes cited above; and

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

**WHEREAS**, Authority has established the Authority PACE Program, which is just such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into July 1, 1993, as amended to date, and the City, desires to become an Associate Member of the JPA by execution of the JPA Agreement, a copy of which is attached as Exhibit "A" hereto, to participate in the programs of the JPA and to assist property owners within the jurisdiction of the City in financing the cost of installing Improvements; and

**WHEREAS**, the City will not be responsible for the conduct of any assessment proceedings; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the Authority PACE Program.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of San Leandro hereby finds, determines and declares as follows:

1. This City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the Authority PACE Program to finance the installation of the Improvements.
2. This City Council consents to inclusion in the Authority PACE Program all of the properties in the jurisdictional boundaries of the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.
3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the Authority PACE Program and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.
4. This City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by appropriate City officials of any necessary documents to effectuate such membership.

5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority PACE Program within the City, and report back periodically to this City Council on the success of such program.

6. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority.



**Exhibit A**

JPA Agreement

**CALIFORNIA HOME FINANCE AUTHORITY AMENDED AND RESTATED  
JOINT EXERCISE OF POWERS AGREEMENT**

(Original date July 1, 1993 and as last amended and restated December 10, 2014)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”) is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

**RECITALS**

A. WHEREAS, the California Rural Home Mortgage Finance Authority (“CRHMFA”) was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “Act”). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. The most recent amendment to the Joint Exercise of Powers Agreement was on January 28, 2004.

B. WHEREAS, the Members of CRHMFA Homebuyers Fund desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

**1. Definitions**

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now

exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the nine-member Executive Committee.

"Authority" means California Home Finance Authority ("CHF"), formerly known as CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the nine-member Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or "RCRC" means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

## **2. Purpose**

The purpose of the Authority is to provide financing for the acquisition, construction, , improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

### **3. Principal Place of Business**

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

### **4. Creation of Authority; Addition of Members or Associate Members**

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

### **5. Term and Termination of Powers**

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a public capital improvement or program. The Authority shall

continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

## **6. Powers; Restriction upon Exercise**

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act..

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- . (1) executing contracts,
- . (2) employing agents, consultants and employees,
- . (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,

- . (4) acquiring, holding or disposing of real or personal property wherever located, including property subject to mortgage,
- . (5) incurring debts, liabilities or obligations,
- . (6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,
- . (7) suing and being sued in its own name, and litigating or settling any suits or claims,
- . (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose
- . (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or

any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

## **7. Governing Board**

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b.

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c.

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish such committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

## **8. Meetings of the Board**

a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.

b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.

c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.

d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except

that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.

e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

## **9. Officers; Duties; Official Bonds**

a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.

b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve ex officio as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the



Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

#### **10. Executive Committee of the Authority**

##### a. Composition

The Authority shall appoint nine (9) members of its Board to serve on an Executive Committee.

##### b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

##### c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

#### **11. Disposition of Assets**

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

## **12. Agreement Not Exclusive; Operation in Jurisdiction of Member**

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the terms of other agreements among the Members or Associate Members.

## **13. Conflict of Interest Code**

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

## **14. Contributions and Advances**

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

## **15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses**

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

## **16. Duties of Members or Associate Members; Breach**

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

## **17. Indemnification**

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

## **18. Immunities**

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

## **19. Amendment**

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective

on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

## **20. Withdrawal of Member or Associate Member**

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

## **20. Miscellaneous**

a. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. Construction. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. Approvals. Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. Jurisdiction; Venue. This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. Integration. This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the

consent of the Board.

g. Severability. Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993 Amended and restated December 10, 1998 Amended and restated February 18, 1999 Amended and restated September 18, 2002 Amended and restated January 28, 2004 Amended and restated December 10, 2014

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

City of San Leandro, California

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Chris Zapata  
City Manager

Attest:

By: \_\_\_\_\_

Tamika Greenwood  
City Clerk

**AFTER EXECUTION, PLEASE SEND TO:**

Golden State Finance Authority  
(formerly California Home Finance Authority)  
1215 K Street, Suite 1650  
Sacramento, CA 95814

ATTACHMENT 1

CALIFORNIA HOME FINANCE AUTHORITY MEMBERS

As of December 10, 2014

Alpine County  
Amador County  
Butte County  
Calaveras County  
Colusa County  
Del Norte County  
El Dorado County  
Glenn County  
Humboldt County  
Imperial County  
Inyo County  
Lake County  
Lassen County  
Madera County  
Mariposa County  
Mendocino County  
Merced County  
Modoc County  
Mono County  
Napa County  
Nevada County  
Placer County  
Plumas County  
San Benito County  
Shasta County  
Sierra County  
Siskiyou County  
Sutter County  
Tehama County  
Trinity County  
Tuolumne County  
Yolo County  
Yuba County



# City of San Leandro

Meeting Date: June 6, 2016

## Resolution - Council

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**File Number:** 16-285

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Sally Barros  
Principal Planner

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Consenting to the Inclusion of Properties Within the Territory of the City in the CSCDA Open PACE Programs; Authorizing the California Statewide Communities Development Authority to Accept Applications from Property Owners, Conduct Contractual Assessment Proceedings and Levy Contractual Assessments Within the Territory of the City; and Authorizing Related Actions (joins Open PACE Programs)

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**WHEREAS**, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of San Leandro (the "City"); and

**WHEREAS**, the Authority is implementing Property Assessed Clean Energy (PACE) programs, which it has designated CSCDA Open PACE, consisting of CSCDA Open PACE programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the "Programs"), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time; and

**WHEREAS**, the administrators currently active in administering Programs are the AllianceNRG Program (presently consisting of Deutsche Bank Securities Inc., CounterPointe Energy Solutions LLC and Leidos Engineering, LLC), PACE Funding LLC, Spruce and Renewable Funding LLC, and the Authority will notify the City of San Leandro in advance of any additions or changes; and

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



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

**WHEREAS**, the City desires to allow the owners of property (“Participating Property Owners”) within its territory to participate in the Programs and to allow the Authority to conduct assessment proceedings under Chapter 29 within its territory and to issue bonds to finance or refinance Improvements; and

**WHEREAS**, the territory within which assessments may be levied for the Programs shall include all of the territory within the City’s boundaries; and

**WHEREAS**, the Authority will conduct all assessment proceedings under Chapter 29 for the Programs and issue any bonds issued in connection with the Programs; and

**WHEREAS**, the City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of San Leandro hereby finds, determines and declares as follows:

Section 1. This City Council hereby finds and declares that properties in the territory of the City will benefit from the availability of the Programs within the territory of the City and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

Section 2. In connection with the Programs, the City hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City and the issuance of bonds to finance or refinance Improvements; provided, that

(1) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(2) The City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs.

Section 3. The appropriate officials and staff of the City are hereby authorized and directed to make applications for the Programs available to all property owners who wish to finance or refinance Improvements; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The following staff persons, together with any other staff persons chosen by the City Manager of the City from time to time, are hereby designated as the contact persons for the Authority in connection with the Programs: Sally Barros, Sustainability Manager.

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Programs.

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

Section 6. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority at: Secretary of the Board, California Statewide Communities Development Authority, 1400 K Street, Sacramento, CA 95814.