



**CITY COUNCIL
REPORT 2015-119**

10A

DATE: October 20, 2015

TO: BELINDA ESPINOSA, CITY MANAGER

FROM: HECTOR DE LA ROSA, ASSISTANT CITY MANAGER

SUBJECT: CONSIDER ADOPTION OF RESOLUTIONS THAT ALLOW PARTICIPATION IN THE STATE OF CALIFORNIA PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS AND THEIR RESPECTIVE JOINT POWERS AUTHORITIES (JPAS).

Recommendation

It is recommended that the City Council adopt

1. Resolution No. 2015-_____, "Authorizing the City to participate in CSCDA Open PACE, which will enable property owners to finance permanently fixed renewable energy, energy efficiency, water efficiency, and seismic strengthening improvements as well as electric vehicle charging infrastructure." AND
2. Resolution No. 2015-_____, "Authorizing the City to become a member of the Western Riverside Council of Governments Joint Powers Authority (WRCOG) and participate in the California HERO program, subject to the execution of an agreement for the California HERO Program to indemnify the City."

BACKGROUND

Several months back, a citizen approached the City of Pinole requesting the City to participate in the Property Assessed Clean Energy (PACE) program. At the time, the City Council requested that Staff evaluate the program and bring the item back to the Council for consideration. Most recently, Staff met with a representative of the PACE programs to become familiar with the program (See PACE Marketing material - Attachment D). Staff asked the representative various questions about the programs benefits with his responses outlined in Attachment E.

What is the PACE program? The Property Assessed Clean Energy (PACE) program is an innovative mechanism for financing energy efficiency and renewable energy improvements on private property. PACE programs allow local governments when authorized by State Law, to fund the up-front cost of energy improvements on commercial and residential properties, which are paid back over time by the property owners.

PACE programs allow residential and commercial property owners located within a participating district to finance up to 100% (not to exceed 15% to 20% of their property value depending on the program) of approved projects. The private property owner voluntarily enters into a contractual agreement with a special tax district in which one resides to access financing that is secured by a lien on one's private property and repaid as a special assessment on one's property tax bill. This means the participating property owner pays the special tax at the same time and in the same manner as other property taxes and assessments. Important to note is that the PACE financing is senior to one's mortgage payment.

Improvements commonly implemented through PACE include: solar panels; electric vehicle charging stations; wall, attic and roof energy efficiency projects; central air conditioners, lighting controls, automatic pool covers, artificial turf, drought tolerant landscaping, rainwater catchment systems and other improvements.

PACE program financing is merely one option for private property owners to finance energy efficiency and water conservation improvements on one's property. PACE program financing is an alternative to other private financing mechanisms, such as using cash, refinancing of one's home, a home equity line of credit or a credit card, to finance these improvements. PACE financing is unique in that qualifying for PACE financing is based primarily on a property owner's home equity and timeliness of property tax and mortgage payments rather than individual credit rating or debt-to-income ratio. All PACE financing debt is linked to the physical property rather than to the property owner. The financed debt does not appear on a property owner's individual credit report.

Federal Housing Financing Agency Issues:

In 2010 the Federal Housing Financing Agency (FHFA) issued a directive to halt PACE financing because they believe it created more risks for Fannie Mae and Freddie Mac mortgages; the reason – because the PACE financing was “Senior” to a mortgage.

To address FHFA's concerns, on September 23, 2013, Governor Brown sent a letter to the FHFA advising that California would establish a mechanism under the California Energy and Advanced Transportation Financing Authority (CAEATFA) to address the concerns raised by FHFA and protect the interest of Fannie Mae and Freddie Mac loans. The Governor proposed that the CAEATFA create a loan loss reserve for PACE programs to cover assessments in the case of any foreclosure or forced sale for unpaid taxes or special assessments.

On December 22, 2014, the Federal Housing Finance Administration (FHFA) issued a warning to homeowners, financial institutions and state authorities, citing its concern with super-priority liens created by either energy retrofit programs or homeowner association priority status. FHFA issued the warning because in some cases a secondary lien on a property forces the Freddie Mac or Fannie Mae lien into a secondary lien position, which the FHFA says increases the risk of losses to taxpayers.

Similar to the concerns raised by FHFA, if the City was to participate in the PACE program, there is a possibility, albeit minor, that the City/Agency may lose its investment in first-time homebuyer loans, commercial loans, and rehabilitation loans, if the individuals who have these loans participate in the PACE program and default. Keep in mind, that the PACE program is authorized to provide funding to individual with a property to debt ratio of up to 90%.

How PACE Programs Work:

All of the major PACE financing programs follow the same general steps:

- Property owners work with PACE Programs' pre-approved contractors to identify energy or water conservation upgrades needs. The contractors, who must be registered with the Contractors State License Board (CSLB) assist property owners in identifying eligible products, cost estimates and energy savings. Contractors already working with property owners can become certified fairly quickly and easily, and within the timeframe of their project.
- If property owners are interested in using PACE to finance their project, the contractor will review the costs and length of term (origination fees range from 3% to 6% and interest rates range from 5% to 9% for terms between five and thirty years). Contractors are able to identify whether a property owner is approved for PACE financing within minutes. If approved, contractors will work with the property owner directly on the PACE assessment paperwork.
- Property owners will call or go online for application and project approval. Financing documents are e-mailed to customers.
- Projects are installed by the approved contractor.
- Property owners sign off on the project and contractors submit copy of permit with request for payment.
- The PACE Program will issue bonds through their respective financing authority and pay contractors directly for the project, including materials and labor.
- The PACE Program's Financing Authority will issue the assessment on the property owner's tax roll through Contra Costa County.

Availability of PACE Programs:

There are several Joint Powers Authorities (JPAs) in California that operate PACE programs. Each requires that the City become an agency member in order to allow the City of Pinole to offer their programs to residents. Each of these programs are operated on the assessment district model pursuant to AB 811. Each has its own policy regarding the availability of the PACE program to property owners. Each of these

In order to proceed with implementation of California-first and California HERO in Pinole, the City Council will need to 1) adopt a resolution opting-in to the California-first program and 2) authorizing the City to join WRCOG as an associate member and execute the associate membership agreement (Attachment C), and 3) authorize WRCOG to conduct contractual assessment proceedings and to levy the assessments within Pinole.

The Resolution expressly provides that 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 assessment payments, or the issuance, sale or administration of any bonds.

Again, the PACE program is a completely voluntary program. A property owner has full control as to whether or not they wants to finance a home energy, water, or seismic improvement project through PACE.

In light of the favorable response from neighboring jurisdictions to PACE programs and requests from citizens, Staff recommends adoption of the Resolutions to allow participation in the PACE programs, and homeowners are encouraged to do their own research and to make an informed decision on the programs.

FISCAL IMPACT

There is no financial impact to the City. City staff time is not required to administer the program.

ATTACHMENTS:

- | | |
|--------------|------------------------------|
| Attachment A | Resolution |
| Attachment B | Resolution |
| Attachment C | Agreement with WRCOG |
| Attachment D | PACE FAQ |
| Attachment E | PACE - Questions and Answers |

RESOLUTION NO. 2015-____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PINOLE 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

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 Pinole (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 program administrators currently active in administering Programs are Alliance NRG and Renewable Funding LLC, and the Authority will notify the City 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 official boundaries; and

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.

PASSED AND ADOPTED this 3RD day of November, 2015 by the following vote, to wit:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

I hereby certify that the foregoing resolution was introduced, passed and adopted on this 3rd day of November, 2015.

Patricia Athenour, MMC
City Clerk

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PINOLE, CALIFORNIA, AUTHORIZING CITY ASSOCIATE MEMBERSHIP IN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG), 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 A CERTAIN JOINT POWERS AGREEMENT RELATED THERETO

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 Pinole (the "City") is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change; 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 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 the City in financing such Improvements; and

WHEREAS, Authority has authority to establish the California HERO Program, which will be 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 Pinole 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:

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.

(Insert Voting Block for the City)

PASSED AND ADOPTED at a Regular meeting of the City Council of the City of Pinole held on the 3rd day of **November 2015** by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

I hereby certify that the foregoing resolution was introduced, passed and adopted on this 3rd day of November, 2015.

Patricia Athenour, MMC
City Clerk

**AMENDMENT TO THE JOINT POWERS AGREEMENT
ADDING CITY OF PINOLE 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 20 day of October, 2015, by City of Pinole ("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").

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 Pinole
2131 Pear Street
Pinole, CA 94564
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: _____

Date: _____

**Executive Committee Chair
Western Riverside Council of Governments**

CITY OF PINOLE

By: _____

Date: _____

Title: City Manager

**AMENDMENT TO THE JOINT POWERS AGREEMENT
ADDING THE CITY OF PINOLE AS
AS AN ASSOCIATE MEMBER OF THE
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WHEREAS, as of October 1, 2012, the 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 counties throughout the state; and

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

WHEREAS, the JPA Amendment sets forth the rights, obligations and duties of the City and Authority with respect to the implementation of the California HERO Program within the incorporated territory of the 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, the 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 the 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 the City. Except as expressly provided for by the this JPA Amendment, the 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.

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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.

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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:

For the Authority:

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

For the City:

City of Pinole
2131 Pear Street
Pinole, CA 94564
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.

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: _____
Executive Committee Chair
Western Riverside Council of Governments

Date: _____

CITY OF PINOLE

By: _____
City Manager

Date: _____

CaliforniaFIRST

Energy Saving Financing

Frequently Asked Questions

1. What is CaliforniaFIRST?

CaliforniaFIRST is a Property Assessed Clean Energy (PACE) financing program for residential and commercial properties. CaliforniaFIRST allows property owners to finance the installation of energy and water improvements on homes or businesses without putting any money down. Property owners pay back the funds that were used to implement their home improvement project as a line item on their property tax bill.

CaliforniaFIRST is a program of the California Statewide Communities Development Authority (CSCDA), a joint powers authority co-sponsored by the California State Association of Counties and the League of California Cities. Renewable Funding administers CaliforniaFIRST.

2. Who are the members of CSCDA?

In order to "opt-in" to CaliforniaFIRST, a city or county must be a member of CSCDA (the vast majority of California cities and counties are already members – over 500 cities, counties and special districts in the state are CSCDA members). Becoming a member is easy and does not cost anything. The documents needed to join CSCDA are available on the CaliforniaFIRST web site. Activation by CSCDA of a membership application typically takes two weeks.

3. How do I know if my city or county is participating in CaliforniaFIRST?

CaliforniaFIRST is currently available in 30+ counties, with 200+ participating local governments (cities and unincorporated county areas) located throughout California. See the CaliforniaFIRST web site for a list of all participating jurisdictions.

CaliforniaFIRST may only accept financing applications from property owners located in jurisdictions that have opted-in to the program. Local governments around the state can join CaliforniaFIRST by passing a simple "opt-in" resolution, which is available on the CaliforniaFIRST web site. CaliforniaFIRST financing becomes available to property owners within the local government's jurisdiction only one or two days after passage of the opt-in resolution.

4. Does CaliforniaFIRST use taxpayer dollars to fund projects or administer the program?

No. CaliforniaFIRST uses private capital to fund every project. Costs to administer the program are paid by program participants, through fees that are rolled into each project's financing. County tax assessors and tax collectors incur small costs to place each PACE assessment on the tax rolls, and to collect and distribute the PACE assessment payments. Counties are reimbursed for these costs through the above-

CaliforniaFIRST

Energy Saving Financing

Frequently Asked Questions

mentioned fees. Cities do not incur any costs as a result of opting-in to the program. Some cities and counties may *voluntarily* expend resources to increase public awareness among property owners of PACE as a financing option.

5. What are the benefits?

CaliforniaFIRST solves many of the financial hurdles facing property owners wanting to install energy and water improvements.

- Competitive, fixed interest rates (which are effectively even more competitive when homeowners are eligible to deduct the interest portion of the PACE payments from their taxes¹)
- Up to a 25 year payback term
- Decreased utility bills from reduced electricity and water usage
- Qualifying for financing is not based on personal credit scores
- The PACE lien payment obligation usually transfers to the new owner if the property is sold

6. Is this a voluntary program?

Yes. Utilizing CaliforniaFIRST financing is completely voluntary. Properties and property owners that don't participate remain unaffected.

7. How is CaliforniaFIRST different from traditional financing?

CaliforniaFIRST is financed through assessments collected on the property tax bill, and the assessment obligation may be assumed by the new owner when the property is sold.

8. How do I qualify for financing?

Qualifying for CaliforniaFIRST financing is based on:

1. The property's estimated market value;
2. The amount of the property owner's equity in the property;
3. The property owner's recent mortgage and property tax payment history; and
4. The dollar value of the proposed renewable energy and energy and water saving improvements.

Qualifying is not based on personal credit scores.

9. How much money can I borrow?

The minimum amount that can be financed is \$5,000. The maximum financing amount is 15% the property value, but may not exceed \$200,000.

¹ Homeowners are advised to consult with their tax preparers to receive guidance on whether or not they can take advantage of the tax deductibility of the interest portion of PACE payments.

CaliforniaFIRST

Energy Saving Financing

Frequently Asked Questions

10. What are the interest rates?

As of November 12, 2014, our interest rates are:

Years to Repay	Interest Rates
5	6.75%
10	7.59%
15	7.99%
20	8.29%
25	8.39%

Homeowners should consult with their contractor to confirm if interest rates have changed.

11. How is the length of the repayment period determined?

Repayment periods will range from 5, 10, 15, 20, or 25² years, depending on the homeowner's preference, and limited by the expected useful life of the most costly product of the project's CaliforniaFIRST-financed improvements.

12. How does repayment work?

A property owner applying to CaliforniaFIRST will agree to the levy by CSCDA of a "contractual assessment" on its property. The property owner will receive funds to pay the up-front costs of installing the approved improvements. The PACE assessment will appear as a new line item on the property owner's property tax bill.

13. Are there any penalties for prepayment of the PACE assessment?

There are no penalties for paying all or a portion of the PACE assessment early.³ Please see Question #18 below for additional information.

14. What happens when I sell my property?

As part of the property record, the assessment will be disclosed at the time of property sale, and the remaining unpaid balance of the financed amount will be transferred to the new property owner.

15. Can CaliforniaFIRST finance solar leases or Power Purchase Agreements (PPAs)?

Yes, pre-paid solar leases and PPAs can be financed through CaliforniaFIRST.

16. Do I need to complete an energy audit of my home?

² 25 year terms are only available for certain solar systems. Homeowners are advised to consult with their solar installer.

³ Partial repayments must be for a minimum of \$2,500.

CaliforniaFIRST

Energy Saving Financing

Frequently Asked Questions

No, but it is encouraged. In certain cases a property owner may want to have a qualified auditor evaluate her home to determine the most cost-effective measures to reduce the home's energy use. The costs of an energy assessment can be financed with CaliforniaFIRST financing.

17. Is there an application fee?

No, there is no fee to apply for CaliforniaFIRST financing.

18. Can I use any contractor?

In order to participate, contractors must be registered with CaliforniaFIRST. As long as contractors meet Program requirements, they can quickly and easily register by visiting californiafirst.org/contractor. All participating contractors must have a valid and active contractor's license with CSLB. The same web page provides a list of participating contractors.

19. How are tax credits, rebates, and other incentives incorporated into CaliforniaFIRST financing?

Property owners are encouraged to pursue available Federal Investment Tax Credits (ITCs), utility rebates and any other incentives. All or a portion of total incentives may be subtracted from the amount financed under the Program; however, it is not required that the financed amount be reduced by the estimated value of the incentives. Once property owners receive their rebates and tax credits, those funds may be used to pay down the PACE assessment balance; the balance would then be re-amortized, resulting in lower annual PACE assessment payments.

20. Is the interest on the PACE assessment payment tax deductible?

The interest portion of payments made under the CaliforniaFIRST Assessment Contract may be deductible for income tax purposes. The interest portion will vary from year to year, and any tax savings will depend on the property owner's tax bracket and other variables. The property owner should consult with his tax advisor to determine if, and to what extent, he may deduct the interest component of payments made under the Assessment Contract.

21. Who do I contact with additional questions?

CaliforniaFIRST staff are available to answer additional questions via email at info@CaliforniaFIRST.org or by phone at (844) 589-7953.

RESPONSES FROM CALIFORNIA FIRST REPRESENTATIVE ON PACE PROGRAM

1. What role does the City play in the formation of the PACE Program?

If the City decides to join a Pace program, it must become a member of the JPA and/or Opt-in to the PACE Program. There is not cost the City and no other responsibilities.

2. Will the City be held liable for any Bonds issued by the JPA to fund the Projects?

No

3. Does the City have to contract with a Company to administer the PACE Program, and/or issue bonds?

No the City is not obligated to join any JPA. If the City chooses it can administer its own PACE program which would require the City to issue bonds.

4. Can the City offer other PACE programs like HERO, Ygrene Works, Figtree, etc to its citizens?

Yes, however the City must become a member of each of the JPA's in order to offer the program within the City boundaries as required by AB 811.

5. Is the City responsible for placing the tax assessment of the individuals who participate in the PACE program with the County?

No, if the City joins a JPA, the Program Administer will annually report the tax on the individual's property through the County property tax roll.

6. Does the City have to form an Assessment District per AB 811?

No, under AB 811 any City that joins the PACE program would automatically be included under a statewide assessment district. However, to have Californiafirst administer the PACE program, the City has to OPT-in as it is a member of the CDAIC. Other programs we have to join and opt-in.

7. Is there any no upfront costs when participating under the PACE program?

The only cost is the interest rate charged on the amount financing plus a onetime 6.5% closing cost.

8. Similar to any type of financing plan, is there is a premium paid for paying back the costs overtime.

Yes, the interest and any capitalized interest accrued from the time the financing is issued to the time the tax liability is placed on the property tax.

9. When the property is up for sale, does the remaining PACE tax transfer to the new owner, correct?

Yes and No. The option to either assume the remaining tax liability or not can be negotiated between the parties. However, the tax liability does run with the property and not the owner.

10. Are the interest rates under the PACE Program higher than refinancing the home?

Yes, the PACE program does have a higher interest rate than conventional refinancing. However, the PACE interest is tax deductible. Plus this program offers the ability for property owners' access to funding they may not otherwise have access to.

11. Is the PACE tax lien on the property Senior to the Mortgage?

Yes.

12. Can the City authorize PACE financing for only residential (1-3 units) and/or multi-family (5 units or greater) and/or commercial?

Yes. The City can designate who is eligible for funding under the PACE program. However, in order to provide access to all type of users, it is recommended that the program be available to all. Note: a fourplex is not authorized/eligible for funding under the PACE program.