

STAFF REPORT



ITEM NO. 21
CITY OF OCEANSIDE

DATE: June 5, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **ADOPTION OF RESOLUTIONS ADDING THE CITY OF OCEANSIDE AS AN ASSOCIATE MEMBER OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG) AND THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (CEDA) TO PERMIT THE PROVISION OF PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM SERVICES WITH THE CITY AND MAKING CERTAIN FINDINGS AND AUTHORIZING CERTAIN MATTERS NECESSARY TO PARTICIPATE IN THE CALIFORNIA PACE PROGRAMS**

SYNOPSIS:

Staff recommends that the City Council adopt a resolution to approve an amendment adding the City of Oceanside as an Associate Member of the Western Riverside Council of Governments (WRCOG) to permit the provision of Property Assessed Clean Energy (PACE) Program Services within the City and make certain findings and authorizing certain matters necessary to participate in the California HERO Program (Exhibits A and B).

Staff also recommends that the City Council adopt a resolution to approve associate membership in the California Enterprise Development Authority (CEDA) and authorize the execution of the associate membership agreement (Exhibits C and D); and adopt a resolution to authorize the City to join the FIGTREE PACE program and authorize CEDA to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City (Exhibits E and F).

BACKGROUND

On July 21, 2008, the Governor signed into law Assembly Bill 811 (AB 811), which authorizes counties and other jurisdictions to establish a program to enter into contractual assessment agreements with property owners to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property. Specifically, an AB 811 program allows counties to make assessment financing available to property owners for the purchase and installation of such improvements. Property owners repay the financing through a contractual assessment on their property. The contractual assessments are recorded as a lien against the subject property, entered in the County tax roll and are collected on the property owner's tax bills at the same time and in the same manner as property taxes.

Property Assessed Clean Energy (PACE) Programs provide a mechanism for commercial and residential property owners in Oceanside to finance the purchase and installation of energy efficient, distributed renewable energy and water conservation improvements on their properties with no up-front cost. Under a PACE Program, a property owner voluntarily commits to the recording of an assessment lien on his/her property, which shall be repaid over time on the annual County property tax bill as an assessment line item.

California HERO Program. The California HERO Program is a joint powers authority sponsored by the Western Riverside Council of Governments (“WRCOG” or “Authority”) and is an economic development program available at no cost to participating cities and counties. The California HERO Program first launched its residential program in Western Riverside County in December 2011 and its commercial program in December 2012.

The California HERO Program is being instituted by the WRCOG 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. Chapter 29 was amended in 2008 by Assembly Bill 811 and further amended in 2009 by Assembly Bill 474. The California HERO Program allows owners of commercial and residential properties in participating cities and counties to finance renewable energy, energy efficiency and water efficiency improvements on their properties. If a property owner chooses to participate, the improvements are financed by the issuance of bonds by WRCOG.

FIGTREE PACE Program. The FIGTREE PACE Program is offered under the California Enterprise Development Authority (CEDA), a joint powers authority formed by the California Association for Local Economic Development (CALED). CALED was formed in 1980 and has grown to over 700 members representing cities, counties, state and federal agencies, economic development corporations, and the private sector.

Participation in the FIGTREE PACE Program is completely voluntary to property owners. The FIGTREE PACE Program is available to commercial property and available to certain residential properties. Examples of energy and water saving property improvements include high efficiency air conditioners, dual-pane windows, renewable energy – such as solar photovoltaic panel systems, insulation, cool roofs, and other such permanently installed energy efficient improvements.

The FIGTREE PACE Program has already funded retrofit projects through the issuance of bonds. The indebtedness will be issued by CEDA and secured solely by the assessment revenues from the liens on participating properties. The City’s revenues and funds will not be pledged to the payment of the bonds. All ongoing administration and coordination will be managed by CEDA.

Participation in the FIGTREE PACE program requires approval of a resolution (Exhibit C) authorizing the City to become an Associate Member of CEDA, and approval of a second resolution (Exhibit E) authorizing CEDA to include the City of Oceanside in the

assessment district proceedings, approving a participation agreement in the FIGTREE PACE program and allowing the levy of assessments on properties within the City (F).

ANALYSIS

Staff has determined that participation in both the California HERO and FIGTREE PACE Programs are a cost effective means of offering property owners the opportunity to make energy and water efficiency retrofits to their property. The issuing authority is expected to issue limited obligation bonds, notes or other forms of indebtedness to fund PACE projects. Property owners will repay the financing as a line item charge on their property tax bill over a period of years.

Both the California HERO and FIGTREE PACE Programs have similar benefits to property owners, including an opportunity to have alternative methods for owners to finance these types of improvements and to realize energy cost savings related to them. Both programs are 100% voluntary. Payment obligations stay with the property upon transfer of ownership, although some mortgage providers may require the assessment to be paid off before the property is transferred.

The proposed resolutions will allow Oceanside property owners to have a choice of provider when taking advantage of a PACE Program to enhance their property. Participation in PACE Programs will create jobs in the local economy and make clean energy available to property owners within the jurisdictional limits of the city.

Both HERO and FIGTREE PACE Programs will levy “contractual assessments” on the owner’s property to repay the portion of the bonds issued to finance the improvements on that property.

The benefits to the property owner include:

- Only property owners who choose to participate in the program will have assessments imposed on their property.
- In today’s economic environment, there may not be attractive private enterprise alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements.
- Even if there were private enterprise alternatives, most private loans are due on sale of the benefited property, which makes it difficult for property owners to match the life of the repayment obligation with the useful life of the financed improvements. Under the California HERO & FIGTREE PACE Programs, the assessment obligation will transfer with the property upon sale.
- The property owner can choose to pay off the assessments at any time, subject to applicable prepayment penalties.
- By virtue of regional aggregation provided by the California HERO and FIGTREE PACE Programs, small projects, both residential and commercial, can have access to the municipal bond market, which may produce a lower borrowing cost.

The benefits to the City include:

- As in conventional assessment financing, the City is not obligated to repay the bonds issued by both PACE Programs or to pay the assessments levied on the participating properties.
- Both the California HERO and FIGTREE PACE Programs handle all assessment administration, bond issuance and bond administration functions. A participating city can provide financing of renewable energy, energy efficiency and water efficiency improvements to property owners through the California HERO and FIGTREE PACE Programs—thereby meeting its political and environmental goals-while committing virtually no staff time to administer the program.

The proposed resolutions authorize both PACE Programs to accept applications from owners of property within the City of Oceanside for municipal financing of renewable energy, energy efficiency and water efficiency improvements through the California HERO and FIGTREE PACE Programs. The resolutions also authorize the California HERO and FIGTREE PACE Programs to conduct assessment proceedings and levy assessments against the property of participating owners within the City. Additionally, it authorizes miscellaneous related actions and makes certain findings and determinations required by law. The California HERO will undertake a judicial validation proceeding as part of its initiation of the California HERO Program. FIGTREE PACE Program has already filed a statewide judicial validation.

Any jurisdiction can withdraw from the California HERO and FIGTREE PACE Programs at any time by passing a resolution rescinding the authorization.

FISCAL IMPACT

There is no direct fiscal impact to the City associated with the staff recommendation of any of the PACE Programs. All PACE Programs' costs are covered through an initial administrative fee included in the property owner's voluntary contractual assessment and an annual administrative fee which is also collected on the property owner's tax bill.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

INSURANCE REQUIREMENTS

None

COMMISSION OR COMMITTEE REPORT

Does not apply.

RECOMMENDATIONS

Staff recommends that the City Council adopt a resolution to approve an amendment adding the City of Oceanside as an Associate Member of the Western Riverside Council of Governments (WRCOG) to permit the provision of Property Assessed Clean Energy (PACE) Program Services within the City and make certain findings and authorizing certain matters necessary to participate in the California HERO Program (Exhibits A and B).

Staff also recommends that the City Council adopt a resolution to approve associate membership in the California Enterprise Development Authority (CEDA) and authorize the execution of the associate membership agreement (Exhibits C and D); and adopt a resolution to authorize the City to join the FIGTREE PACE program and authorize CEDA to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City (Exhibits E and F).

PREPARED BY:

M. A. Lahsaie
Mo. Lahsaie
Environmental Officer

SUBMITTED BY:

Peter A. Weiss
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

MSL

for Cari Dale, Water Utilities Director

CD

Teri Ferro, Financial Services Director

TF

- Exhibit A: Resolution Approving Amendment to the Joint Powers Agreement
- Exhibit B: Amendment to the Joint Powers Agreement and Original Joint Powers Agreement
- Exhibit C: Resolution Approving Associate Membership
- Exhibit D: Associate Membership Agreement
- Exhibit E: Resolution to Join the FIGTREE PACE Program
- Exhibit F: CEDA Participation Agreement

EXHIBIT A

RESOLUTION NO. _____

1
2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
3 OCEANSIDE APPROVING THE AMENDMENT TO THE JOINT
4 POWERS AGREEMENT AND CONSENTING TO INCLUSION
5 OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN
6 THE CALIFORNIA HERO PROGRAM TO FINANCE
7 DISTRIBUTED GENERATION RENEWABLE ENERGY
8 SOURCES, ENERGY AND WATER EFFICIENCY
9 IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING
10 INFRASTRUCTURE

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

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

22 WHEREAS, City of Oceanside (the "City") is committed to development of renewable energy
23 sources and energy efficiency improvements, reduction of greenhouse gases, protection of our
24 environment, and reversal of climate change; and

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

28 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

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

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

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

16 NOW, THEREFORE, the Oceanside City Council does hereby resolve as follows:

17 1. This City Council finds and declares that properties in the City's incorporated area will
18 be benefited by the availability of the California HERO Program to finance the installation of
19 Improvements.

20 2. This City Council hereby approves the JPA Amendment and authorizes the execution
21 thereof by appropriate City officials.

22 3. This City Council consents to inclusion in the California HERO Program of all of the
23 properties in the incorporated area within the City and to the Improvements, upon the request by and
24 voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations
25 applicable to such program; and to the assumption of jurisdiction thereover by Authority for the
26 purposes thereof.

27 4. The consent of this City Council constitutes assent to the assumption of jurisdiction by
28 Authority for all purposes of the California HERO Program and authorizes Authority, upon satisfaction

1 of the conditions imposed in this resolution, to take each and every step required for or suitable for
2 financing the Improvements, including the levying, collecting and enforcement of the contractual
3 assessments to finance the Improvements and the issuance and enforcement of bonds to represent and
4 be secured by such contractual assessments.

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

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

11 7. The Mayor shall sign this Resolution and the City Clerk shall attest thereto, and
12 this Resolution shall take effect and be in force on the date of its adoption.

13
14 PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this
15 _____ day of _____, 2013, by the following vote

- 16 AYES:
- 17 NAYES:
- 18 ABSENT:
- 19 ABSTAIN:

20 _____
MAYOR, CITY OF OCEANSIDE

21 ATTEST:

22 _____
23 CITY CLERK

24 APPROVED AS TO FORM:
25 
26 CITY ATTORNEY

EXHIBIT B

**AMENDMENT TO THE JOINT POWERS AGREEMENT
ADDING CITY OF OCEANSIDE 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 ____, 2013, by City of Oceanside (“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 Bond Act of 1911, being Division 7 of the California Streets and Highways Code (“Chapter 29”) to authorize cities, counties, and cities and counties to establish voluntary contractual assessment programs, commonly referred to as a Property Assessed Clean Energy (“PACE”) program, to fund various renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure (the “Improvements”) that are permanently fixed to residential, commercial, industrial, agricultural or other real property; and

WHEREAS, Authority intends to establish a PACE program to be known as the “California HERO Program” pursuant to Chapter 29 as now enacted or as such legislation may be amended hereafter, which will authorize the implementation of a PACE financing program for cities and 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 Government Code sections 6500 et seq., 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 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, right to amend or vote on amendments to the Authority JPA, and 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 with the California HERO 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 PACE 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 the Bonds or any other 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.

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 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 Oceanside
300 North Coast Highway
Oceanside, CA 92054
Att: Water Utilities Director

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.

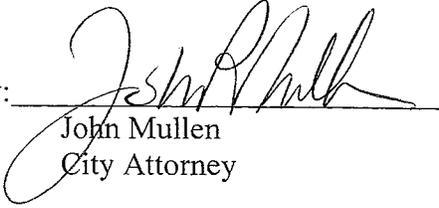
IN WITNESS WHEREOF, the Parties hereto have caused this JPA Amendment to be executed and attested by their officers thereunto duly authorized as of the date first above written.

[SIGNATURES ON FOLLOWING PAGES]

City of Oceanside

By: _____
Peter Weiss
City Manager

Approved as to form

By: 
John Mullen
City Attorney

JOINT POWERS AGREEMENT OF
THE WESTERN RIVERSIDE
COUNCIL OF GOVERNMENTS

This Agreement is made and entered into on the 1st day of April, 1991, pursuant to Government Code Section 6500 et. seq. and other pertinent provisions of law, by and between six or more of the cities located within Western Riverside County and the County of Riverside.

RECITALS

A. Each member and party to this Agreement is a governmental entity established by law with full powers of government in legislative, administrative, financial, and other related fields.

B. The purpose of the formation is to provide an agency to conduct studies and projects designed to improve and coordinate the common governmental responsibilities and services on an area-wide and regional basis through the establishment of an association of governments. The Council will explore areas of inter-governmental cooperation and coordination of government programs and provide recommendations and solutions to problems of common and general concern.

C. When authorized pursuant to an Implementation Agreement, the Council shall manage and administer thereunder.

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

I.

PURPOSE AND POWERS

1.1 Agency Created.

There is hereby created a public entity to be known as the "Western Riverside Council of Governments" ("WRCOG"). WRCOG is formed by this Agreement pursuant to the provision of Government Code Section 6500 et. seq. and other pertinent provision of law. WRCOG shall be a public entity separate from the parties hereto.

1.2 Powers.

1.2.1. WRCOG established hereunder shall perform all necessary functions to fulfill the purposes of this Agreement. Among other functions, WRCOG shall:

a. Serve as a forum for consideration, study and recommendation on area-wide and regional problems;

b. Assemble information helpful in the consideration of problems peculiar to Western Riverside County;

c. Explore practical avenues for intergovernmental cooperation, coordination and action in the interest of local public welfare and means of improvements in the administration of governmental services; and

d. Serve as the clearinghouse review body for Federally-funded projects in accordance with Circular A-95 in conjunction with the Southern California Association of Governments.

1.2.2. The Council shall have the power in its own name to do any of the following;

- a. When necessary for the day to day operation of the Council, to make and enter into contracts;
- b. To contract for the services of engineers, attorneys, planners, financial consultants and separate and apart therefrom to employ such other persons, as it deems necessary;
- c. To apply for an appropriate grant or grants under any federal, state, or local programs.
- d. To receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and any governmental entity;
- e. To lease, acquire, construct, manage, maintain, and operate any buildings, works, or improvements;
- f. To delegate some or all of its powers to the Executive Committee and the Executive Director of the Council as hereinafter provided.

1.2.3 The association shall have the power in its own name, only with the approval of all affected member agencies to;

- a. Acquire, hold and dispose of property by eminent domain, lease, lease purchase or sale.
- b. To incur debts, liabilities, obligations, and issue bonds;

II.

ORGANIZATION OF COUNCIL

2.1 Parties.

The parties to WRCOG shall be the County of Riverside and each city located within Western Riverside County which has executed or hereafter executes this Agreement, or any addenda, amendment, or supplement thereto and agrees to such become a member upon such terms and conditions as established by the general council or executive committee, and which has not, pursuant to provisions hereof, withdrawn therefrom. Only the parties identified in this section shall be considered contracting parties to the JPA under Government Code section 6502.

2.2 Names.

The names, particular capacities and addresses of the parties at any time shall be shown on Exhibit "A" attached hereto, as amended or supplemented from time to time.

2.3 Duties.

WRCOG shall do whatever is necessary and required to carry out the purposes of this agreement and when authorized by an Implementation Agreement pursuant to section 1.2.3 as appropriate, to make and enter into such contracts, incur such debts and obligations, assess contributions from the members, and perform such other acts as are necessary to the accomplishment of the purposes of such agreement, within the provisions of Government Code Section 6500 et seq. and as prescribed by the laws of the State of California.

2.4 Governing Body.

2.4.1. WRCOG shall be governed by a General Assembly with membership consisting of the appropriate representatives from the County of Riverside, each city which is a signatory to this Agreement, Western Municipal Water District, and Eastern Municipal Water District, the number of which shall be determined as hereinafter set forth. The

General Assembly shall meet at least once annually, preferably scheduled in the evening. Each member agency of the General Assembly shall have one vote for each mayor, council member, county supervisor, and water district board member present at the General Assembly. The General Assembly shall act only upon a majority of a quorum. A quorum shall consist of a majority of the total authorized representatives, provided that members representing a majority of the member agencies are present. The General Assembly shall adopt and amend by-laws for the administration and management of this Agreement, which when adopted and approved shall be an integral part of this Agreement. Such by-laws may provide for the management and administration of this Agreement.

2.4.2. There shall be an Executive Committee which exercises the powers of this Agreement between sessions of the General Assembly. Members of the Executive Committee shall be the Mayor from each of the member cities, four members of the Riverside County Board of Supervisors and the President of each Water District, the remaining member of the Board of Supervisors shall serve as an alternate, except any City Council, at its discretion, can appoint a Mayor Pro Tem or other city council member in place of the Mayor, and each water district board, at its discretion, can appoint another board member in place of the President. The Executive Committee shall act only upon a majority of a quorum. A quorum shall consist of a majority of the member agencies. Membership of the Water Districts on the General Assembly and Executive Committee of WRCOG shall be conditioned on the Water Districts entering into a separate Memorandums of Understanding with WRCOG. Membership of the Riverside County Superintendent of Schools on the General Assembly and Executive Committee of WRCOG

shall be conditioned on the Superintendent of Schools entering into a separate Memorandums of Understanding with WRCOG.

2.4.3. Each member of the General Assembly and the Executive Committee shall be a current member of the legislative body such member represents.

2.4.4. Each participating member on the Executive Committee shall also have an alternate, who must also be a current member of the legislative body of the party such alternate represents. The name of the alternate members shall be on file with the Executive Committee. In the absence of the regular member from an agency, the alternate member from such agency shall assume all rights and duties of the absent regular member.

2.5 Executive Director.

The Executive Director shall be the chief administrative officer of the Council. He shall receive such compensation as may be fixed by the Executive Committee. The powers and duties of the Executive Director shall be subject to the authority of the Executive Committee and include the following:

- a. To appoint, direct and remove employees of the Council.
- b. Annually to prepare and present a proposed budget to the Executive Committee and General Assembly.
- c. Serve as Secretary of the Council and of the Executive Committee.
- d. To attend meetings of the Executive Committee.
- e. To perform such other and additional duties as the Executive Committee may require.

2.6 Principal Office.

The principal office of WRCOG shall be established by the Executive Committee and shall be located within Western Riverside County. The Executive Committee is hereby granted full power and authority to change said principal office from one location to another within Western Riverside County. Any change shall be noted by the Secretary under this section but shall not be considered an amendment to this Agreement.

2.7 Meetings.

The Executive Committee shall meet at the principal office of the agency or at such other place as may be designated by the Executive Committee. The time and place of regular meetings of the Executive Committee shall be determined by resolution adopted by the Executive Committee; a copy of such resolution shall be furnished to each party hereto. Regular, adjourned and special meetings shall be called and conducted in accordance with the provisions of the Ralph M. Brown Act, Government Code Section 54950 et. seq., as it may be amended.

2.8 Powers and Limitations of the Executive Committee.

Unless otherwise provided herein, each member or participating alternate of the Executive Committee shall be entitled to one vote, and a vote of the majority of those present and qualified to vote constituting a quorum may adopt any motion, resolution, or order and take any other action they deem appropriate to carry forward the objectives of the Council.

2.9 Minutes.

The secretary of the Council shall cause to be kept minutes of regular adjourned regular and special meetings of the General Assembly and Executive Committee, and shall cause a copy of the minutes to be forwarded to each member and to each of the members hereto.

2.10 Rules.

The Executive Committee may adopt from time to time such rules and regulations for the conduct of its affairs consistent with this agreement or any Implementation Agreement.

2.11 Vote or Assent of Members.

The vote, assent or approval of the members in any manner as may be required, hereunder shall be evidenced by a certified copy of the action of the governing body of such party filed with the Council. It shall be the responsibility of the Executive Director to obtain certified copies of said actions.

2.12 Officers.

There shall be selected from the membership of the Executive Committee, a chairperson and a vice chairperson. The Executive Director shall be the secretary. The Treasurer of the County of Riverside shall be the Treasurer of the Council and the Controller or Auditor of the County of Riverside shall be the Auditor of the Council. Such persons shall possess the powers of, and shall perform the treasurer and auditor functions respectively, for WRCOG and perform those functions required of them by Government Code Sections 6505, 6505.5 and 6505.6, and by all other applicable laws and regulations, including any subsequent amendments thereto.

The chairperson and vice chairperson, shall hold office for a period of one year commencing July 1st of each and every fiscal year; provided, however, the first chairperson and vice chairperson appointed shall hold office from the date of appointment to June 30th of the ensuing fiscal year. Except for the Executive Director, any officer, employee, or agent of the Executive Committee may also be an officer, employee, or agent of any of the members. The appointment by the Executive Committee of such a person shall be evidence that the two positions are compatible.

2.13 Committees.

The Executive Committee may, as it deems appropriate, appoint committees to accomplish the purposes set forth herein. All committee meetings of WRCOG, including those of the Executive Committee, shall be open to all members.

2.14 Additional Officers and Employees.

The Executive Committee shall have the power to authorize such additional officers and assistants as may be appropriate. Such officers and employees may also be, but are not required to be, officers and employees of the individual members.

2.15 Bonding Requirement.

The officers or persons who have charge of, handle, or have access to any property of WRCOG shall be the members of the Executive Committee, the treasurer, the Executive Director, and any other officers or persons to be designated or empowered by the Executive Committee. Each such officer or person shall be required to file an official bond with the Executive Committee in an amount which shall be established by the Executive Committee. Should the existing bond or bonds of any such officer be extended to cover the obligations provided herein, said bond shall be the official bond required

herein. The premiums on any such bonds attributable to the coverage required herein shall be appropriate expenses of WRCOG.

2.16 Status of Officers and Employees.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents, or employees of any of the members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Executive Committee shall be deemed, by reason of their employment by the Executive Committee, to be employed by any of the members or, by reason of their employment by the Executive Committee, to be subject to any of the requirements of such members.

2.17 Restrictions.

Pursuant to Government Code Section 6509, for the purposes of determining the restrictions to be imposed by the Council in its exercise of the above-described joint powers, reference shall be made to, and the Council shall observe, the restrictions imposed upon the County of Riverside.

2.18 Water Districts and TUMF Matters.

Pursuant to this Joint Powers Agreement, WRCOG administers the Transportation Mitigation Fee ("TUMF") for cities in western Riverside County. The fee was established prior to the Water District's involvement with WRCOG and will fund transportation improvements for the benefit of the County of Riverside and the cities in western Riverside County. As such, the Western Municipal Water District and the Eastern Municipal Water

District General Assembly and Executive Committee Members shall not vote on any matter related to the administration of the TUMF program or the expenditure of TUMF revenues.

III

FUNDS AND PROPERTY

3.1 Treasurer.

The Treasury of the member agency whose Treasurer is the Treasurer for WRCOG shall be the depository for WRCOG. The Treasurer of the Council shall have custody of all funds and shall provide for strict accountability thereof in accordance with Government Code Section 6505.5 and other applicable laws of the State of California. He or she shall perform all of the duties required in Government Code Section 6505 and following, such other duties as may be prescribed by the Executive Committee.

3.2. Expenditure of Funds.

The funds under this Agreement shall be expended only in furtherance of the purposes hereof and in accordance with the laws of the State of California and standard accounting practices shall be used to account for all funds received and disbursed.

3.3. Fiscal Year.

WRCOG shall be operated on a fiscal year basis, beginning on July 1 of each year and continuing until June 30 of the succeeding year. Prior to July 1 of each year, the General Assembly shall adopt a final budget for the expenditures of WRCOG during the following fiscal Year.

3.4. Contributions/Public Funds.

In preparing the budget, the General Assembly by majority vote of a quorum shall determine the amount of funds which will be required from its members for the purposes of

this Agreement. The funds required from its members after approval of the final budget shall be raised by contributions 50% of which will be assessed on a per capita basis and 50% on an assessed valuation basis, each city paying on the basis of its population and assessed valuation and the County paying on the basis of the population and assessed valuation within the unincorporated area of Western Riverside County as defined in the by-laws. The parties, when informed of their respective contributions, shall pay the same before August 1st of the fiscal year for which they are assessed or within sixty days of being informed of the assessment, whichever occurs later. In addition to the contributions provided, advances of public funds from the parties may be made for the purposes of this Agreement. When such advances are made, they shall be repaid from the first available funds of WRCOG.

The General Assembly shall have the power to determine that personnel, equipment or property of one or more of the parties to the Agreement may be used in lieu of fund contributions or advances.

All contributions and funds shall be paid to WRCOG and shall be disbursed by a majority vote of a quorum of the Executive Committee, as authorized by the approved budget.

3.5 Contribution from Water Districts.

The provision of section 3.4 above shall be inapplicable to the Western Municipal Water District and the Eastern Municipal Water District. The amount of contributions from these water districts shall be through the WRCOG budget process.

IV

BUDGETS AND DISBURSEMENTS

4.1 Annual Budget.

The Executive Committee may at any time amend the budget to incorporate additional income and disbursements that might become available to WRCOG for its purposes during a fiscal year.

4.2 Disbursements.

The Executive Director shall request warrants from the Auditor in accordance with budgets approved by the General Assembly or Executive Committee subject to quarterly review by the Executive Committee. The Treasurer shall pay such claims or disbursements and such requisitions for payment in accordance with rules, regulations, policies, procedures and bylaws adopted by the Executive Committee.

4.3 Accounts.

All funds will be placed in appropriate accounts and the receipt, transfer, or disbursement of such funds during the term of this Agreement shall be accounted for in accordance with generally accepted accounting principles applicable to governmental entities and pursuant to Government Code Sections 6505 et seq. and any other applicable laws of the State of California. There shall be strict accountability of all funds. All revenues and expenditures shall be reported to the Executive Committee.

4.4 Expenditures Within Approved Annual Budget.

All expenditures shall be made within the approved annual budget. No expenditures in excess of those budgeted shall be made without the approval of a majority of a quorum of the Executive Committee.

4.5 Audit.

The records and accounts of WRCOG shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the County Auditor, State Controller and each party to WRCOG no later than fifteen (15) days after receipt of said audit by the Executive Committee.

4.6 Reimbursement of Funds.

Grant funds received by WRCOG from any federal, state, or local agency to pay for budgeted expenditures for which WRCOG has received all or a portion of said funds from the parties hereto shall be used as determined by WRCOG's Executive Committee.

V

LIABILITIES

5.1 Liabilities.

The debts, liabilities, and obligation of WRCOG shall be the debts, liabilities, or obligations of WRCOG alone and not of the parties to this Agreement.

5.2 Hold Harmless and Indemnity.

Each party hereto agrees to indemnify and hold the other parties harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from negligent acts or omissions of the indemnifying party or its employees. Where the General Assembly or Executive Committee itself or its agents or employees are held liable for injuries to persons or property, each party's liability for contribution or indemnity for such injuries shall be based proportionately upon the contributions (less voluntary contributions) of each member. In the event of liability imposed upon any of the

parties to this Agreement, or upon the General Assembly or Executive Committee created by this Agreement, for injury which is caused by the negligent or wrongful act or omission of any of the parties in the performance of this Agreement, the contribution of the party or parties not directly responsible for the negligent or wrongful act or omission shall be limited to One Hundred Dollars (\$100.00). The party or parties directly responsible for the negligent or wrongful acts or omissions shall indemnify, defend, and hold all other parties harmless from any liability for personal injury or property damage arising out of the performance of this Agreement. The voting for or against a matter being considered by the General Assembly or executive or other committee or WRCOG, or abstention from voting on such matter, shall not be construed to constitute a wrongful act or omission within the meaning of this Subsection.

VI

ADMISSION AND WITHDRAWAL OF PARTIES

6.1 Admission of New Parties.

It is recognized that additional cities other than the original parties, may wish to participate in WRCOG. Any Western Riverside County city may become a party to WRCOG upon such terms and conditions as established by the General Assembly or Executive Committee. Any Western Riverside County city shall become a party to WRCOG by the adoption by the city council of this agreement and the execution of a written addendum thereto agreeing to the terms of this Agreement and agreeing to any additional terms and conditions that may be established by the general assembly or Executive Committee. Special districts which are significantly involved in regional problems and the boundaries of which include territory within the collective area of the membership shall be

eligible for advisory membership in the Council. The representative of any such advisory member may participate in the work of committees of the Council.

6.2 Withdrawal from WRCOG.

It is fully anticipated that each party hereto shall participate in WRCOG until the purposes set forth in this Agreement are accomplished. The withdrawal of any party, either voluntary or involuntary, unless otherwise provided by the General Assembly or Executive Committee, shall be conditioned as follows:

a. In the case of a voluntary withdrawal following a properly noticed public hearing, written notice shall be given to WRCOG, six months prior to the effective date of withdrawal;

b. Withdrawal shall not relieve the party of its proportionate share of any debts or other liabilities incurred by WRCOG prior to the effective date of the parties' notice of withdrawal;

c. Unless otherwise provided by a unanimous vote of the Executive Committee, withdrawal shall result in the forfeiture of that party's rights and claims relating to distribution of property and funds upon termination of WRCOG as set forth in Section VII below;

d. Withdrawal from any Implementation Agreement shall not be deemed withdrawal from membership in WRCOG.

VII

TERMINATION AND DISPOSITION OF ASSETS

7.1 Termination of this Agreement.

WRCOG shall continue to exercise the joint powers herein until the termination of this Agreement and any extension thereof or until the parties shall have mutually rescinded this Agreement; providing, however, that WRCOG and this Agreement shall continue to exist for the purposes of disposing of all claims, distribution of assets and all other functions necessary to conclude the affairs of WRCOG.

Termination shall be accomplished by written consent of all of the parties, or shall occur upon the withdrawal from WRCOG of a sufficient number of the agencies enumerated herein so as to leave less than five of the enumerated agencies remaining in WRCOG.

7.2 Distribution of Property and Funds.

In the event of the termination of this Agreement, any property interest remaining in WRCOG following the discharge of all obligations shall be disposed of as the Executive Committee shall determine with the objective of distributing to each remaining party a proportionate return on the contributions made to such properties by such parties, less previous returns, if any.

VIII

IMPLEMENTATION AGREEMENTS

8.1 Execution of Agreement.

When authorized by the Executive Committee, any affected member agency or agencies enumerated herein, may execute an Implementation Agreement for the

purpose of authorizing WRCOG to implement, manage and administer area-wide and regional programs in the interest of the local public welfare. The costs incurred by WRCOG in implementing a program including indirect costs, shall be assessed only to those public agencies who are parties to that Implementation Agreement.

IX

MISCELLANEOUS

9.1 Amendments.

This Agreement may be amended with the approval of not less than two-thirds (2/3) of all member agencies.

9.2 Notice.

Any notice or instrument required to be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to the addresses of the parties as shown on Exhibit "A", shall be deemed to have been received by the party to whom the same is addressed at the expiration of seventy-two (72) hours after deposit of the same in the United States Post Office for transmission by registered or certified mail as aforesaid.

9.3 Effective Date.

This Agreement shall be effective and WRCOG shall exist from and after such date as this Agreement has been executed by any seven or more of the public agencies, including the County of Riverside, as listed on page 1 hereof.

9.4 Arbitration.

Any controversy or claim between any two or more parties to this Agreement, or between any such party or parties and WRCOG, with respect to disputes, demands,

differences, controversies, or misunderstandings arising in relation to interpretation of this Agreement, or any breach thereof, shall be submitted to and determined by arbitration. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to every other party to this Agreement and to the Executive Director of the Council. Such notice shall designate as "respondents" such other parties as the initiating party intends to have bound by any award made therein. Any party not so designated but which desires to join in the arbitration may, within ten (10) days of service upon it of such notice, file with all other parties and with the Executive Director of the Council a response indicating its intention to join in and to be bound by the results of the arbitration, and further designating any other parties it wishes to name as a respondent. Within twenty (20) days of the service of the initial demand for arbitration, the initiating party and the respondent or respondents shall each designate a person to act as an arbitrator. The designated arbitrators shall mutually designate the minimal number of additional persons as arbitrators as may be necessary to create an odd total number of arbitrators but not less than three to serve as arbitrator(s).

The arbitrators shall proceed to arbitrate the matter in accordance with the provisions of Title 9 of Part 3 of the Code of Civil Procedure, Section 1280 et. seq. The parties to this Agreement agree that the decision of the arbitrators will be binding and will not be subject to judicial review except on the ground that the arbitrators have exceeded the scope of their authority.

9.5 Partial Invalidity.

If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the

remaining terms, provisions, sections, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

9.6 Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

9.7 Assignment.

The parties hereto shall not assign any rights or obligations under this Agreement without written consent of all other parties.

9.8 Execution.

The Board of Supervisors of the County of Riverside and the city councils of the cities enumerated herein have each authorized execution of this Agreement as evidenced by the authorized signatures below, respectively.

Original Members Agencies

1. City of Banning
2. City of Beaumont (withdrawn)
3. City of Calimesa
4. City of Canyon Lake
5. City of Corona
6. City of Hemet
7. City of Lake Elsinore
8. City of Moreno Valley
9. City of Murrieta
10. City of Norco
11. City of Perris
12. City of Riverside
13. City of San Jacinto
14. City of Temecula
15. County of Riverside

Additional City Members

1. City of Eastvale (added on 08/02/2010, Resolution 01-11)
2. City of Jurupa Valley (added on 07/29/2011, Resolution 02-12)
3. City of Menifee (added on 10/06/2008, Resolution 03-09)
4. City of Wildomar (added on 08/04/2008, Resolution 01-09)

**THE WESTERN RIVERSIDE
COUNCIL OF GOVERNMENTS**

Participating Agencies

5. Eastern Municipal Water District (membership on the Governing Board of WRCOG, 05/11/2009)
6. Riverside County Superintendent of Schools (membership as an ex-officio, advisory member of WRCOG, 11/07/2011)
7. Western Municipal Water District (membership on the Governing Board of WRCOG, 05/11/2009)

EXHIBIT C

RESOLUTION NO. _____

**RESOLUTION APPROVING ASSOCIATE MEMBERSHIP
BY THE CITY OF OCEANSIDE IN THE CALIFORNIA
ENTERPRISE DEVELOPMENT AUTHORITY AND
AUTHORIZING AND DIRECTING THE EXECUTION OF
AN ASSOCIATE MEMBERSHIP AGREEMENT
RELATING TO ASSOCIATE MEMBERSHIP OF THE
CITY IN THE AUTHORITY**

WHEREAS, the City of Oceanside, 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 "Authority") 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, the Authority is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of the Authority 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 the Authority is attached; and

WHEREAS, the City is willing to become an Associate Member of the Authority subject to the provisions of the Associate Membership Agreement.

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

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

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

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

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EXHIBIT D

ASSOCIATE MEMBERSHIP AGREEMENT

by and between the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and the

CITY OF OCEANSIDE, CALIFORNIA

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this "Associate Membership Agreement"), dated as of _____ by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Authority") and the CITY OF _____, CALIFORNIA, a municipal corporation, duly organized and existing under the laws of the State of California (the "City");

WITNESSETH:

WHEREAS, the Cities of Selma, Lancaster and Eureka (individually, a "Member" and collectively, the "Members"), have entered into a Joint Powers Agreement, dated as of June 1, 2006 (the "Agreement"), establishing the Authority and prescribing its purposes and powers; and

WHEREAS, the Agreement designates the Executive Committee of the Board of Directors and the President of the California Association for Local Economic Development as the initial Board of Directors of the Authority; and

WHEREAS, the Authority has been formed for the purpose, among others, to assist for profit and nonprofit corporations and other entities to obtain financing for projects and purposes serving the public interest; and

WHEREAS, the Agreement permits any other local agency in the State of California to join the Authority as an associate member (an "Associate Member"); and

WHEREAS, the City desires to become an Associate Member of the Authority;

WHEREAS, City Council of the City has adopted a resolution approving the Associate Membership Agreement and the execution and delivery thereof;

WHEREAS, the Board of Directors of the Authority has determined that the City should become an Associate Member of the Authority;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Authority and the City do hereby agree as follows:

Section 1. Associate Member Status. The City is hereby made an Associate Member of the Authority for all purposes of the Agreement and the Bylaws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by the City and the Authority, the City shall be and remain an Associate Member of the Authority.

Section 2. Restrictions and Rights of Associate Members. The City shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of Directors or by the Voting Members of the Authority. In addition, no officer, employee or representative of the City shall have any right to become an officer or director of the Authority by virtue of the City being an Associate Member of the Authority.

Section 3. Effect of Prior Authority Actions. The City hereby agrees to be subject to and bound by all actions previously taken by the Members and the Board of Directors of the Authority to the same extent as the Members of the Authority are subject to and bound by such actions.

Section 4. No Obligations of Associate Members. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the City.

Section 5. Execution of the Agreement. Execution of this Associate Membership Agreement and the Agreement shall satisfy the requirements of the Agreement and Article XII of the Bylaws of the Authority for participation by the City in all programs and other undertakings of the Authority.

IN WITNESS WHEREOF, the parties hereto have caused this Associate Membership Agreement to be executed and attested by their proper officers thereunto duly authorized, on the day and year first set forth above.

**CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY**

By: _____
Gurbax Sahota, Chair
Board of Directors

Attest:

Michelle Stephens, Asst. Secretary

CITY OF OCEANSIDE, CALIFORNIA

By: _____
Jim Wood, Mayor
City Council

Attest:

City Clerk

7

**JOINT EXERCISE OF POWERS AGREEMENT
CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

THIS AGREEMENT (the "Joint Exercise of Powers Agreement") is dated as of June 1, 2006, by and among the City of Selma, California ("Selma"), the City of Lancaster, California ("Lancaster"), and the City of Eureka, California ("Eureka") each duly organized and existing under the laws of the State of California ("State") and such other local agencies within the State as may hereafter become signatories hereto.

WITNESSETH:

WHEREAS, the Joint Exercise of Powers Act (the "Act"), Article 1 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State, authorizes public agencies by agreement to jointly exercise any powers common to each of them; and

WHEREAS, each of the parties hereto are authorized by law to exercise broad governmental functions and authority to accomplish their respective purposes, including, but not limited to, the right to issue bonds and expend the proceeds thereof and the right to acquire, sell, develop, lease or administer property; and

WHEREAS, by this Agreement, the parties hereto desire to create and establish the "California Enterprise Development Authority" (the "Authority") for the purposes set forth herein and to exercise the powers described herein; and

WHEREAS, each of the parties hereto are authorized by law to exercise broad governmental functions, including, but not limited to, stimulating or expanding local economies, promoting opportunities for the creation or retention of employment and stimulating economic activity and increasing the tax base, and each of the parties hereto possess the authority to accomplish those functions by means of issuing bonds or refunding bonds, entering into loan agreements, indentures, lease agreements, installment purchase agreements, installment sale agreements and trust agreements, making grants and loans, providing other financial assistance or in any other manner deemed appropriate by the governmental entity; and

WHEREAS, each of the parties hereto also desires to assist nonprofit public benefit corporations located within their respective jurisdictions to undertake and complete projects that will provide public benefits to the communities; and

WHEREAS, each Member desires to join together with the other Members for the purpose of assisting the Members and for-profit and nonprofit organizations in obtaining tax-exempt financing for appropriate projects and purposes;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, Selma, Lancaster and Eureka do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Unless the context otherwise requires, the words and terms defined in this Article I shall, for the purpose hereof, have the meanings herein specified.

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code.

“Agreement” means this Joint Exercise of Powers Agreement.

“Associate Member” shall mean any Local Agency that shall have duly executed this Agreement and executed and delivered to the Authority an Associate Membership Agreement in the form and as further provided in the Bylaws of the Authority.

“Authority” means the California Enterprise Development Authority established pursuant to Section 2.2 of this Agreement.

“Board” means the Board of Directors of the Authority referred to in Section 2.3, which shall be the governing body of the Authority.

“Bonds” means the revenue obligations, inclusive of principal (premium, if any) and interest authorized to be issued by the Authority, including a single bond, a promissory note or notes, including bond anticipation notes, lease agreement, installment purchase agreement, certificates of participation or any other instrument evidencing an indebtedness or obligation.

“CALED” means the California Association for Local Economic Development.

“Chairman” means the Chairman elected pursuant to Section 3.1.

“Director” means each member of the Board.

“Eureka” means the City of Eureka, a charter city and municipal corporation formed and existing pursuant to the Constitution and laws of the State.

“Executive Director” means the Executive Director of the Authority appointed pursuant to Section 3.1.

“Facilities” means real and personal property that may be financed or refinanced pursuant to the Act, including but not limited to, land, buildings, improvements, facilities and equipment.

“Fiscal Year” means the period from July 1st to and including the following June 30th.

“Lancaster” means the City of Lancaster, a municipal corporation formed and existing pursuant to the Constitution and laws of the State.

“Legislative Body” means the governing body of a Member.

“Local Agency” means a Member or an agency or subdivision of that Member sponsoring a Project or any other city, county, city and county or redevelopment agency of the State.

“Members” means, collectively, Voting Members and Associate Members.

“Project” means the acquisition, construction and installation of Facilities by the issuance of Bonds.

“Revenues” means all income and receipts of the Authority from a bond purchase agreement, bonds acquired by the authority, loans, installment sale agreements, and other revenue producing agreements entered into by the Authority, projects financed by the Authority, grants and other sources of income, and all interest or other income from any investment of any money in any fund or account established for the payment of principal or interest or premiums on Bonds.

“Secretary” means the Secretary of the Authority appointed pursuant to Section 3.1.

“Selma” means the City of Selma, a municipal corporation formed and existing pursuant to the Constitution and laws of the State.

“State” means the State of California.

“Treasurer” means the Treasurer of the Authority appointed pursuant to Section 3.2.

“Vice-Chairman” means the Vice-Chairman elected pursuant to Section 3.1.

“Voting Members” means Selma, Lancaster and Eureka or each individually or other Local Agencies that may be added pursuant to the terms of this Agreement.

ARTICLE II

GENERAL PROVISIONS

Section 2.1. Purpose. This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the Members and for other purposes as permitted under the Act and as agreed by one or more of the parties hereto. The primary purpose of this Agreement is to assist the Members and for-profit and nonprofit organizations located within the jurisdictions of the Members in financing industrial and commercial development projects and other public purpose projects. Additional purposes of this Agreement are assisting Members undertake any and all other projects permitted by the Act.

Section 2.2. Creation of Authority. Pursuant to the Act, there is hereby created a public entity to be known as the “California Enterprise Development Authority.” The Authority shall be a public entity separate and apart from the Members. The Members hereby designate CALED, a California nonprofit corporation, as the administrator and executor of this Agreement, and retain for themselves the power to approve amendments to this Agreement as specified in Section 8.5, hereof.

Section 2.3. Board of Directors. The Authority shall be administered by a board of directors. The Members, by execution of this Agreement, designate the Executive Committee of the Board of Directors of CALED and the President of CALED as the initial Board of Directors of the Authority. This designation of the Board of Directors shall remain unchanged, unless and until such composition is changed by a unanimous vote of the Voting Members. The Board shall be called the "Board of Directors of the California Enterprise Development Authority." All voting power of the Authority, except as otherwise provided, shall reside in the Board.

Section 2.4. Meetings.

- (a) Meetings of Voting Members. The Authority shall provide for the meeting of its Voting Members; provided, however, that at least one meeting of Voting Members shall be held each year, which may not be waived. The date, hour and place of the holding of meetings shall be fixed by resolution of the Board which shall set one such meeting each year and any other meetings at the written request of any Voting Member, and a copy of such resolution shall be filed with each of the Members. The Legislative Body of each Voting Member shall appoint one of its members to serve as the Voting Member's representative to the Authority (the "Representative"). The Representative may select up to two alternates (the "Alternate"), each of whom are either a member of the Voting Member's Legislative Body or an employee of the Voting Member, to represent the Voting Member. The name of each Alternate must be filed with the Executive Director of the Authority at least 30 days prior to the opening of any regular meeting of the Voting Members and at least 24 hours prior to the opening of any special meeting of the Voting Members to be an effective designation. All voting power of the Voting Members, except as otherwise provided herein, shall reside in the Voting Members.
- (b) Board of Directors Meetings. The Board shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each year unless otherwise waived by a resolution of the Board. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be filed with each Director.
- (c) Special Meetings. Special meetings of the Board, the Voting Members or the Members may be called in accordance with the provisions of Section 54956 of the California Government Code.
- (d) Call, Notice and Conduct of Meetings. All meetings of the Board, Voting Members and Members, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (Section 54950 et seq. of the California Government Code).

Section 2.5. Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board and Voting Members and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to each Voting Member.

Section 2.6. Voting.

- (a) At meetings of the Board, each Director shall have one vote;
- (b) At meetings of the Voting Members, each Voting Member shall have one vote; and
- (c) Associate Members are not entitled to vote, except as to amendments of this Agreement, in which instance each Associate Member shall have one vote.

Section 2.7. Quorum; Required Votes; Approvals.

- (a) *Board Meetings.* Three (3) Directors shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative votes of at least a majority of the Directors present at any meeting at which a quorum is present shall be required to take any action by the Board.
- (b) *Meetings of Voting Members.* Two (2) Voting Members shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. Unless otherwise provided herein, the affirmative votes of at least a majority of the Voting Members present at any meeting at which a quorum is present shall be required to take any action by the Voting Members.

Section 2.8. Bylaws, Rules and Regulations. The Board may adopt, from time to time, bylaws for the Authority and rules and regulations for the conduct of its meetings as are necessary for the purposes hereof.

Section 2.9. Withdrawal and Addition of Parties. A Member may withdraw from the Authority upon written notice to the Board; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any Bonds remain outstanding. Any such withdrawal shall be effective only upon receipt of a written notice of withdrawal by the Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to Exhibit A to this Agreement effective upon such filing. Each Member certifies that the withdrawal of any Member does not affect this Agreement or each Member's intent to contract with the Members then remaining.

Qualifying Local Agencies may be added as parties to this Agreement and become Voting Members upon: (i) adoption of a resolution by the unanimous vote of the Voting Members at any regular or special meeting and (ii) the filing by such Local Agency of an executed counterpart of this Agreement, together with a certified copy of the resolution of the Legislative Body of such Local Agency approving this Agreement and the execution and

delivery hereof. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement and add such Local Agency to Exhibit A hereto as an amendment, effective upon such filing.

Section 2.10. Associate Members. Any Local Agency within the State of California may, with the approval of the Board of Directors, become an Associate Member of the Authority by (i) executing and delivering to the Authority an Associate Membership Agreement in the form of and as further provided in the Bylaws and (ii) the filing by such Local Agency of a certified copy of the resolution of the Legislative Body of such Local Agency approving the Associate Membership Agreement and the execution and delivery thereof. Upon satisfaction of such conditions, the Board shall file such executed counterpart of the Associate Membership Agreement and add such Local Agency to Exhibit A hereto as an amendment, effective upon such filing. An Associate Member shall not be entitled to vote on any matter coming before the Voting Members or the Board, except as otherwise specified herein. However, an Associate Member shall be entitled to participate in all programs and other undertakings of the Authority, including, without limitation, any undertaking to finance or refinance a Project, and any other financing program.

ARTICLE III

OFFICERS AND EMPLOYEES

Section 3.1. Chairman, Vice Chairman, Secretary and Executive Director. So long as the Board shall be comprised of the Executive Committee of the Board of Directors of CALED and the President of CALED, the President of CALED shall serve as the Chairman of the Board. The Board shall elect a Vice-Chairman from among its members to serve for such term as shall be determined by the Board. The Board shall appoint or employ an Executive Director, Secretary and Treasurer. The Treasurer (who can be the Executive Director or an officer or employee of the Authority) shall serve as treasurer, auditor, and controller of the Authority pursuant to and in compliance with Section 6505.6 of the Act. The officers shall perform the duties normal to said offices. The Chairman shall sign all contracts on behalf of the Authority, unless a resolution of the Board shall provide otherwise, and shall perform such other duties as may be imposed by the Board. The Vice Chairman shall sign contracts and perform all of the Chairman's duties in the absence of the Chairman. The Secretary shall countersign all contracts signed by the Chairman or Vice Chairman on behalf of the Authority, unless a resolution of the Board shall provide otherwise, perform such other duties as may be imposed by the Board and cause a Notice of Joint Powers Agreement to be filed with the Secretary of State of the State within 30 days of the execution of this Agreement by the last signatory thereto pursuant to the Act. The Executive Director shall administer the day to day operations of the Authority.

Section 3.2. Treasurer. The Treasurer shall be the depository, shall have custody of all of the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in Sections 6505 and 6505.5 of the Act and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority. As provided in Sections 6505 and 6505.6 of the Act, the Treasurer shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority in compliance with Section 6505 of the

Act. Pursuant to Section 6505 of the Act, the Board, by unanimous vote on a resolution therefor, may replace the annual audit with an audit covering a two year period.

Section 3.3. Officers in Charge of Records, Funds and Accounts. Pursuant to Section 6505.5 of the Act, the Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 3.4. Bonding Persons Having Access to Authority Property. From time to time, the Board may designate persons, in addition to the Secretary and the Treasurer, having charge of, handling or having access to any records, funds of accounts, and may require such persons, including the Secretary and Treasurer, to file official bonds. The Board may designate the respective amounts of the official bonds of the Secretary and the Treasurer and such other persons pursuant to Section 6505.1 of the Act.

Section 3.5. Legal Advisor. The Board shall have the power to appoint the legal advisor of the Authority who shall perform such duties as may be prescribed by the Board.

Section 3.6. Other Employees. The Board shall have the power by resolution to appoint and employ such other employees, consultants and independent contractors as may be necessary for the purposes of this Agreement.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their respective functions shall apply to the officers, agents or employees of the Authority to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents or employees under this Agreement.

None of the officers, agents, or employees directly employed by the Board shall be deemed, by reason of their employment by the Board to be employed by any of the Members, individually or collectively, or by reason of their employment by the Board, to be subject to any of the requirements of the Members.

Section 3.7. Assistant Officers. The Board may by resolution appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Director), and may by resolution provide for the appointment of additional officers of the Authority who may or may not be Directors, as the Board shall from time to time deem appropriate.

ARTICLE IV

POWERS

Section 4.1. General Powers. The Authority shall exercise, in the manner herein provided, the powers which are common to each of the Members, or as otherwise permitted under the Act, and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.4. As provided in the Act, the Authority shall be a public

entity separate from the Members, and the debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the Members.

Section 4.2. Power to Issue Revenue Bonds. The Authority shall have all of the powers provided in the Act, including but not limited to the power to issue Bonds.

Section 4.3. Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any or all of the following:

- (a) To acquire property by purchase, exchange, gift, lease, contract, or otherwise, except by eminent domain. The power to acquire real property shall not be exercised for other than Authority use except pursuant to project agreement or indenture;
- (b) To maintain property;
- (c) To dispose of property by lease, sale, exchange, donation, release, relinquishment, or otherwise;
- (d) With respect to property, to: (1) charge and collect rent under any lease; (2) sell at public or private sale, with or without public notice; (3) sell at a discount or below appraised value or for a nominal consideration, only; (4) sell on an installment payment or a conditional sales basis; (5) convey, or provide for the transfer of, property without further act of the authority, upon exercise of an option; (6) sell at a fixed or formula price, and receive for any such sale the note or notes of a company and mortgages, deeds of trust, or other security agreements respecting such property;
- (e) To acquire and hold property, including funds, project agreements and other obligations of any kind, and pledge, encumber or assign the same, or the revenues therefrom or any portion of such revenues, or other rights, whether then owned or possessed, or thereafter acquired, for the benefit of the bondholders, and as security or additional security for any bonds or the performance of obligations under an indenture;
- (f) To acquire insurance against any liability or loss in connection with property, in such amounts as the Authority deems desirable;
- (g) To provide for the advance of bond proceeds and other funds pursuant to project agreements as necessary to pay or reimburse for project costs;
- (h) To exercise all rights and to perform all obligations of the Authority under the project agreements and indenture, including the right, upon any event of default by or the failure to comply with any of the obligations thereof by the lessee, purchaser, or other company thereunder, to dispose of all or part of the property to the extent authorized by the project agreements or indenture;

- (i) To borrow money and issue its bonds for the purpose of paying all or any part of the costs of a project, and for any other authorized purpose, as provided in this title;
- (j) To refund outstanding bonds of the Authority without regard to the purposes of this title when the board determines that such refunding will be of benefit to a company or holders of such bonds, subject to the provisions of the proceedings;
- (k) To invest, deposit, and reinvest funds under the control of the Authority and bond proceeds in the types of securities or obligations authorized, pending application thereof to the purposes authorized by, subject to the provisions of, the proceedings;
- (l) To expressly waive any immunity of the political subdivisions of the State provided by the Constitution or laws of the United States of America to taxation by the United States of interest on bonds issued by an authority, in obtaining federal benefits;
- (m) To fund administration expenses (1) by the establishment and collection of reasonable fees in amounts as may be determined by the Board, (2) by the acceptance of funds and other aid from a Member and from other governmental sources authorized to provide such funds or aid, (3) by the acceptance of contributions from business, trade, labor, community, and other associations, and (4) by other authorized means;
- (n) To contract and pay compensation for professional, financial, and other services; and
- (o) to exercise any and all additional powers as may be provided in the Act.

Section 4.4. Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Act and shall be subject (in accordance with Section 6509 of the Act) to the restrictions upon the manner of exercising such powers that are imposed upon any Member in the exercise of similar powers.

ARTICLE V

METHODS OF PROCEDURE; CREDIT TO MEMBERS

Section 5.1. Assumption of Responsibilities by the Authority. As soon as practicable after the date of execution of this Agreement, the Directors shall hold the organizational meeting of the Board. At said meeting the Board shall provide for its regular meetings as required by Section 2.4.

Section 5.2. Credit to Members. All accounts or funds created and established pursuant to any instrument or agreement to which the Authority is a party, and any interest

earned or accrued thereon, shall inure to the benefit of the Members in the respective proportions for which such funds or accounts were created.

ARTICLE VI

CONTRIBUTION; ACCOUNTS AND REPORTS; FUNDS

Section 6.1. Contributions. The Voting Members may in the appropriate circumstance, when required hereunder: (a) make contributions from their treasuries for the purposes set forth herein, (b) make payments of public funds to defray the cost of such purposes, (c) make advances of public funds for such purposes, such advances to be repaid as provided herein, or (d) use its personnel, equipment or property in lieu of other contributions or advances. The provisions of Sections 6512 and 6512.1 of the Act are hereby incorporated into this Agreement by reference.

Section 6.2. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust indenture or trust agreement entered into with respect to the proceeds of any Bonds issued by the Authority. The books and records of the Authority in the hands of a trustee or the Treasurer shall be open to inspection at all reasonable times by representatives of the Members. The Treasurer, within 180 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members to the extent such activities are not covered by the report of such trustee. The trustee appointed under any trust indenture or trust agreement shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust indenture or trust agreement. Said trustee may be given such duties in said trust indenture or trust agreement as may be desirable to carry out this Agreement.

Section 6.3. Funds. Subject to the applicable provisions of any instruments or agreement which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, and shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

Section 6.4. Annual Budget and Administrative Expenses and Surplus Revenues. The Board shall adopt a budget for administrative expenses, which shall include all expenses not included in any financing issue of the Authority, annually prior to July 1st of each year. Any moneys held by the Authority and not required for the payment of administrative expenses of the Authority or other activities authorized under this Agreement shall be deemed surplus and may be allocated as directed by the Board for economic development purposes.

ARTICLE VII

TERM

Section 7.1. Term. This Agreement shall become effective, and the Authority shall come into existence, on the date hereof, and this Agreement and the Authority shall thereafter continue in full force and effect so long as any Bonds remain outstanding.

Section 7.2. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the Voting Members in such manner as shall be agreed upon by the Voting Members.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to:

City of Selma
1710 Tucker Street
Selma, California 93662
Attention: City Clerk

City of Lancaster
44933 North Fern Avenue
Lancaster, California 93534
Attention: City Clerk

City of Eureka
531 K Street
Eureka, California 95501
Attention: City Clerk

Section 8.2. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 8.3. Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 8.4. Law Governing. This Agreement is made in the State under the constitution and laws of the State, and is to be so construed.

Section 8.5. Amendments.

(a) This Agreement may be amended at any time, or from time to time, except as limited by contract with the owners of Bonds issued by the Authority or certificates of participation in payments to be made by the Authority or a Member or by applicable regulations or laws of any jurisdiction having authority, by the procedure set forth in paragraph (b), below. Appendix A to the Agreement may be amended to correctly list current Members without separate action by the Members or the Board.

(b) Except as otherwise provided herein, this Agreement shall not be amended, modified, or altered, unless the negative consent of each of the Members is obtained. To obtain the negative consent of each of the Members, the following negative consent procedure shall be followed: (i) the Authority shall provide each Member with a notice at least sixty days prior to the date such proposed amendment is to become effective explaining the nature of such proposed amendment and this negative consent procedure; (ii) the Authority shall provide each Member who did not respond a reminder notice with a notice at least thirty days prior to the date such proposed amendment is to become effective; and (iii) if no Member objects to the proposed amendment in writing within sixty days after the initial notice, the proposed amendment shall become effective with respect to all Members.

Section 8.6. Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including, but not limited to, injunction and specific performance, necessary or permitted by law to enforce this Agreement.

Section 8.7. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 8.8. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members, respectively. No Member may assign any right or obligation hereunder without the written consent of all of the others.

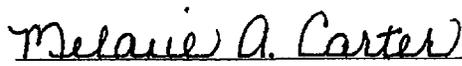
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized on the following pages as of the day and year set below the name of each of the parties.

[SIGNATURE PAGES TO FOLLOW]

CITY OF SELMA

By 
D-B Heusser
City Manager

Attest:


Melanie A. Carter
City Clerk

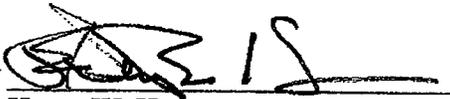
APPROVED AS TO FORM

By 
Richard H. Hargrove
City Attorney

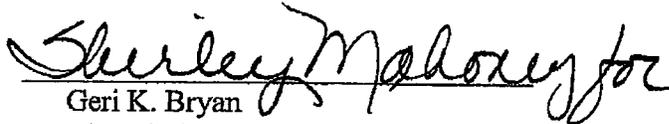
Dated: 5/1/06

SIGNATURE PAGE OF
CITY OF SELMA
TO JOINT EXERCISE OF POWERS AGREEMENT

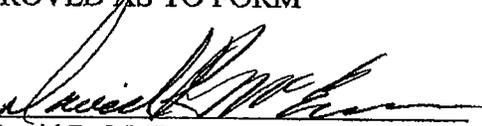
CITY OF LANCASTER

By 
Henry W. Hearn
Mayor

Attest:


Geri K. Bryan
City Clerk

APPROVED AS TO FORM

By 
David R. McEwen
City Attorney

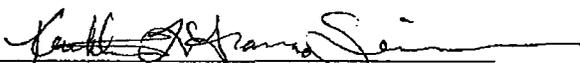
Dated: 5/23/06

SIGNATURE PAGE OF
CITY OF LANCASTER
TO JOINT EXERCISE OF POWERS AGREEMENT

CITY OF EUREKA

By 
Peter La Vallee
Mayor

Attest:


Kathleen Franco Simmons
City Clerk

APPROVED AS TO FORM

By 
David Tranberg
City Attorney

Dated: May 2, 2006

SIGNATURE PAGE OF
CITY OF EUREKA
TO JOINT EXERCISE OF POWERS AGREEMENT

EXHIBIT A

MEMBERS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

(as of 3/4/2008)

Voting Members

City of Selma
City of Lancaster
City of Eureka

Associate Members

City of Upland
County of Stanislaus
County of Sacramento
City of Pittsburg
County of Sonoma
County of Yolo
County of Riverside
City of Fairfield
City of Duarte
City of Montebello
County of San Bernardino
City of King City
City of Long Beach
County of Madera
City of Greenfield
City of Milpitas

EXHIBIT E

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY OF OCEANSIDE TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF OCEANSIDE; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Enterprise Development Authority ("CEDA") is a joint exercise of powers authority, comprised of cities and counties in the State of California, including the City of Oceanside (the "City"); 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 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 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 and issue Bonds under the 1915 Act to finance Improvements; and

WHEREAS, there has been presented to this meeting a proposed form of Resolution of

1
2 Intention to be adopted by CEDA in connection with such assessment proceedings (the "ROI"),
3 a copy of which is attached hereto as Exhibit A; and

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

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

11 WHEREAS, to protect the City in connection with operation of the FIGTREE PACE
12 program, FIGTREE Energy Financing, the program administrator, has agreed to defend and
13 indemnify the City; and

14 WHEREAS, based upon such authorization as provided in the Participation Agreement,
15 a copy of which is attached hereto as Exhibit B, the City will not be responsible for the conduct
16 of any assessment proceedings, the levy of assessments, any required remedial action in the case
17 of delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued
18 in connection with FIGTREE PACE.

19 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oceanside,
20 as follows:

21 Section 1. On the date hereof, the City Council hereby finds and determines that the
22 issuance of Bonds by CEDA in connection with FIGTREE PACE will provide significant
23 public benefits, including without limitation, savings in effective interest rates, bond
24 preparation, bond underwriting and bond issuance costs and reductions in effective user charges
25 levied by water and electricity providers within the boundaries of the City.

26 Section 2. In connection with FIGTREE PACE, the City hereby consents to the special
27 assessment proceedings by CEDA pursuant to Chapter 29 on any property within the
28 Boundaries and the issuance of Bonds under the 1915 Act, provided that:

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

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

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

11 The City Council hereby approves the Participation Agreement between the City and CEDA in
12 the form attached hereto. The City Council hereby authorizes the City Manager to execute the
13 Participation Agreement with such changes as the City Manager deems appropriate in order to
14 commence the FIGTREE PACE program within the jurisdiction of the City.

15 Section 3. Pursuant to the requirements of Chapter 29, CEDA has prepared and will
16 update from time to time the "Program Report" for FIGTREE PACE (the "Program Report")
17 and associated documents, and CEDA will undertake assessment proceedings and the financing
18 of Improvements as set forth in the Program Report.

19 Section 4. The appropriate officials and staff of the City are hereby authorized to create a
20 weblink on the City of Oceanside website to the FIGTREE PACE program to make applications
21 for FIGTREE PACE available to all property owners who wish to finance Improvements. The
22 City Manager may designate a contact person for CEDA in connection with FIGTREE PACE
23 program.

24 Section 5. The appropriate officials and staff of the City are hereby authorized to execute
25 and deliver the related documents as are reasonably required by CEDA in accordance with the
26 Program Report to implement FIGTREE PACE for Participating Property Owners.

27 Section 6. The City Council hereby finds that adoption of this Resolution is not a
28 "project" under the California Environmental Quality Act ("CEQA"), because the Resolution

1 does not involve any commitment to a specific project which may result in a potentially
2 significant physical impact on the environment, as contemplated by Title 14, California Code of
3 Regulations, Section 15378(b)(4).

4 Section 7. This Resolution shall take effect immediately upon its adoption. The City
5 Clerk is hereby authorized and directed to transmit a certified copy of this resolution to
6 FIGTREE Energy Resource Company.

7 Section 8. Services related to the formation and administration of the assessment district
8 will be provided by CEDA at no cost to the City.

9
10 PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this
11 day of _____, 2013, by the following vote

12 AYES:

13 NAYES:

14 ABSENT:

15 ABSTAIN:

16
17 _____
MAYOR, CITY OF OCEANSIDE

18 ATTEST:

19 _____
CITY CLERK

20 APPROVED AS TO FORM:

21 
22 _____
CITY ATTORNEY

23 A RESOLUTION AUTHORIZING THE CITY OF OCEANSIDE TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE
24 CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS
25 AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF OCEANSIDE; AND AUTHORIZING
26 RELATED ACTIONS
27
28

EXHIBIT A

CEDA Resolution of Intention

RESOLUTION NO. _____

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

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

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

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

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

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

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

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.

- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.
- (d) A public purpose will be served by establishing a contractual assessment program, to be known as FIGTREE PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

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

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

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

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

shall advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

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

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

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

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

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

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

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

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

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

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

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

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

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

PASSED AND ADOPTED this 15th day of May 15, 2013.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair

ATTEST:

Larry Cope, Secretary

EXHIBIT B

Participation Agreement

PARTICIPATION AGREEMENT

by and among the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and

FIGTREE ENERGY FINANCING

and the

CITY OF OCEANSIDE

Dated as of _____, 2013

service on the Bonds, and related administration costs and expenses, are to be included on the regular county tax bills sent to each Program Participant.

- (g) The Participating Member desires to authorize the CEDA to (i) record the assessment against the participating property owner's 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") and (iii) prepare program guidelines for the operations of the Program; and
- (h) The Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. Under the Law, the Participating Member must designate the parties who shall be responsible to proceed with collection and foreclosure of the liens on the properties within the District. The Program Report provides for accelerated foreclosure; and
- (i) The Participating Member desires to appoint the CEDA as its representative to 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 Marks Roos Act.

NOW THEREFORE:

Section 1. Recitals. The Recitals contained herein are true and correct and are hereby incorporated herein by reference.

Section 2. Appointment of CEDA. The City is not and will not be deemed to be an agent of FIGTREE or CEDA as a result of this Agreement. The Participating Member hereby appoints the CEDA as its representative to record the assessment against each Program Participant's parcel and administer the District in accordance with the Law. The Participating Member hereby designates the CEDA as the entity which shall 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 Marks Roos Act.

Section 3. 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 negligent performance by FIGTREE of the work required under the agreement between FIGTREE and CEDA. FIGTREE, on behalf of itself and the CEDA, agrees to defend, indemnify, and hold harmless the Participating Member, its officers, agents, employees and attorneys from and against any and all liabilities, claims, or demands arising or alleged to arise as a result of the CEDA or FIGTREE'S performance or failure to perform under this Agreement or the Program, except that arising from the sole negligence or willful misconduct of Participating Member.

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement by their officers duly authorized as of the day and year first written above.

CALIFORNIA ENTERPRISE DEVELOPMENT
AUTHORITY

By: _____
Gurbax Sahota, Chair

FIGTREE ENERGY FINANCING

By: _____
Mahesh Shah, CEO

CITY OF OCEANSIDE

By: _____
Peter Weiss, City Manager

EXHIBIT F

PARTICIPATION AGREEMENT

by and among the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and

FIGTREE ENERGY FINANCING

and the

CITY OF OCEANSIDE

Dated as of _____, 2013

PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT, made and entered into as of _____, 2013, by and among the CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, a joint powers agency organized and existing under the laws of the State of California (“CEDA”), third party administrator FIGTREE Energy Financing (“FIGTREE”), and the City of Oceanside, a City, organized and existing under the laws of the State of California (the “Participating Member”);

WITNESSETH:

In consideration of the mutual covenants herein contained, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree, as follows:

Recitals

- (a) The CEDA is a joint powers agency organized and existing pursuant to the Joint Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California; and
- (b) The CEDA has adopted the FIGTREE Property Assessed Clean Energy (PACE) and Job Creation Program (the “Program” or “FIGTREE PACE”), for the financing of renewable generation and energy efficient and water savings equipment on improved commercial, industrial and residential property within the Participating Member’s jurisdiction; and
- (c) The CEDA has retained third party administrator, FIGTREE, to carry out the implementation of the Program; and
- (d) The Participating Member is either a municipal corporation or other public body and a member of the CEDA in good standing; and
- (e) The Participating Member has authorized the CEDA to form an assessment district (the “District”) for the PACE financing of renewable generation and energy efficient and water savings improvements on certain properties owned by property owners who voluntarily agree to participate in the Program (“Program Participant”); and
- (f) The CEDA intends to issue bonds, notes or other forms of indebtedness (the “Bonds”) to finance improvements within the District and in consideration therefor, assessments shall be recorded against each parcel prior to the issuance of the Bonds. Installments of principal and interest sufficient to meet annual debt

service on the Bonds, and related administration costs and expenses, are to be included on the regular county tax bills sent to each Program Participant.

- (g) The Participating Member desires to authorize the CEDA to (i) record the assessment against the participating property owner's 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") and (iii) prepare program guidelines for the operations of the Program; and
- (h) The Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. Under the Law, the Participating Member must designate the parties who shall be responsible to proceed with collection and foreclosure of the liens on the properties within the District. The Program Report provides for accelerated foreclosure; and
- (i) The Participating Member desires to appoint the CEDA as its representative to 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 Marks Roos Act.

NOW THEREFORE:

Section 1. Recitals. The Recitals contained herein are true and correct and are hereby incorporated herein by reference.

Section 2. Appointment of CEDA. The City is not and will not be deemed to be an agent of FIGTREE or CEDA as a result of this Agreement. The Participating Member hereby appoints the CEDA as its representative to record the assessment against each Program Participant's parcel and administer the District in accordance with the Law. The Participating Member hereby designates the CEDA as the entity which shall 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 Marks Roos Act.

Section 3. 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 negligent performance by FIGTREE of the work required under the agreement between FIGTREE and CEDA. FIGTREE, on behalf of itself and the CEDA, agrees to defend, indemnify, and hold harmless the Participating Member, its officers, agents, employees and attorneys from and against any and all liabilities, claims, or demands arising or alleged to arise as a result of the CEDA or FIGTREE'S performance or failure to perform under this Agreement or the Program, except that arising from the sole negligence or willful misconduct of Participating Member.

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement by their officers duly authorized as of the day and year first written above.

CALIFORNIA ENTERPRISE DEVELOPMENT
AUTHORITY

By: _____
Gurbax Sahota, Chair

FIGTREE ENERGY FINANCING

By: _____
Mahesh Shah, CEO

CITY OF OCEANSIDE

By: _____
Peter Weiss, City Manager