CITY OF CLAYTON
Founded 1857 .. Incorporated 1964

AGENDA

REGULAR MEETING

* * *

CLAYTON CITY COUNCIL

* * *

TUESDAY, May 19, 2015

7:00 P.M.

Hoyer Hall, Clayton Community Library
6125 Clayton Road, Clayton, CA 94517

Mayor: David T. Shuey
Vice Mayor: Howard Geller

Council Members
Jim Diaz
Keith Haydon
Julie K. Pierce

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail and on the City's Website at least 72 hours prior to the Council meeting.

- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at **www.ci.clayton.ca.us**

- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.

- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

* CITY COUNCIL *

May 19, 2015

1. **CALL TO ORDER THE CITY COUNCIL** – Mayor Shuey.

2. **PLEDGE OF ALLEGIANCE –** led by Mayor Shuey.

3. **CONSENT CALENDAR**

Consent Calendar items are typically routine in nature and are considered for approval by the City Council with one single motion. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or input may request so through the Mayor.

(a) Approve the minutes of the regular meeting of May 5, 2015 and the minutes of the adjourned regular meeting of May 12, 2015. (View Here)

(b) Approve Financial Demands and Obligations of the City. (View Here)

(c) Adopt a Resolution accepting as complete the public works project involving the removal and replacement of the resilient play surface at the tot lot of The Grove Park in the amount of $54,605.61 by Miracle PlaySystems, Inc. (Fund 211 – The Grove Park), and ordering the filing of a Notice of Completion. (View Here)

(d) Adopt a Resolution accepting as complete the public works project involving the removal and replacement/improvement of the water play feature at The Grove Park in the amount of $57,612.23 by Miracle PlaySystems, Inc. (Fund 211- The Grove Park), and ordering the filing of a Notice of Completion. (View Here)

(e) Adopt a Resolution approving the Engineer's Report and declaring intent to levy and collect real property tax assessments for the Diablo Estates at Clayton Benefit Assessment District (BAD) in FY 2015-16, and setting July 21, 2015 at or about 7:00 p.m. as the Public Hearing date and time on the fiscal year tax assessment levies. (View Here)

4. **RECOGNITIONS AND PRESENTATIONS**

(a) A Proclamation declaring Thursday, May 23, 2015 as "Sarah Owen Day" in the City of Clayton in recognition of her achievement of the Girl Scout Gold Award. (View Here)

5. **REPORTS**

(a) Planning Commission – No meeting held.
(b) Trails and Landscaping Committee – No meeting held.
(c) City Manager/Staff
(d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.
(e) Other

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

7. PUBLIC HEARINGS - None.

8. ACTION ITEMS

(a) Continued consideration of Resolutions (3) authorizing participation in the State of California Property Assessed Clean Energy (PACE) Programs within the city of Clayton, consisting of the CaliforniaFirst, the Figtree, and the HERO Programs. (View Here)
(Community Development Director)

Staff recommendation: Following staff report and discussion of the State of California Property Assessed Clean Energy (PACE) Programs for the City of Clayton, that Council receive public comments and then adopt each of the 3 prepared Resolutions allowing implementation of the CaliforniaFirst, the Figtree, and the HERO Programs within the municipal limits of Clayton.

9. COUNCIL ITEMS – limited to requests and directives for future meetings.

10. CLOSED SESSION

(a) *Government Code Section 54957.6*, Conference with Labor Negotiator
Instructions to City-designated labor negotiator: City Manager
Employee Organization: Clayton Police Officers' Association (CPOA)

Report Out from Closed Session: Mayor Shuey

11. **ADJOURNMENT**– the next regularly scheduled City Council meeting is June 2, 2015.

# # # # #

Agenda Date: 5-19-2015

Agenda Item: 3a

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, May 5, 2015

1. **CALL TO ORDER & ROLL CALL** –the meeting was called to order at 7:00 p.m. by Mayor Shuey in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Shuey, Vice Mayor Geller and Councilmembers Diaz, Haydon and Pierce. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, City Clerk/HR Manager Janet Brown, City Engineer Rick Angrisani, and Community Development Director Charlie Mullen.

2. **PLEDGE OF ALLEGIANCE** – led by Mayor Shuey.

3. **CONSENT CALENDAR**

It was moved by Councilmember Pierce, seconded by Councilmember Diaz, to approve the Consent Calendar as submitted. (Passed; 5-0 vote).

(a) Approved the minutes of the regular meeting of April 21, 2015.

(b) Approved Financial Demands and Obligations of the City.

(c) Adopted Resolution No. 13-2015 directing the preparation of an Engineer's Report for calculation of the real property tax assessments in FY 2015-16 for the Diablo Estates at Clayton Benefit Assessment District (BAD).

(e) Adopted Resolution No. 14-2015 approving Addendum No. 1 to the base Memorandum of Agreement with the Clayton Police Officers' Association effective May 5, 2015 through June 30, 2015, unless replaced sooner by mutual agreement.

4. **RECOGNITIONS AND PRESENTATIONS**

(a) Certificate of Recognition to John Blatter, Troop 492, Muir District, Mt. Diablo Silverado Council of the Boy Scouts of America, for his Eagle Scout Project construction and installation of a shade structure in the Clayton Dog Park.

Mayor Shuey presented a Certificate to Eagle Scout candidate John Blatter from Boy Scout Troop 492. During a photo slideshow about the project at the Clayton Dog Park, John explained the planning and installation process for the shade structure.

(b) Certificates of Recognition to "Do The Right Thing" public school students selected for exemplifying the character trait of "Integrity" during the months of March and April 2015.

Mayor Shuey and Mt. Diablo Elementary School Principal Irene Keenan and Teachers Mrs. Carcamo and Karen Osterkamp recognized students Dylan Gordillo-Wright and Erin Robinson.

Mayor Shuey and Diablo View Middle School Principal Patti Bannister and Teacher Mrs. Cherepy recognized Diyar Kudrat and Julia Deely.

Mayor Shuey and Clayton Valley Charter High School Teacher Mr. Rosewell recognized Alyssa Van Horn, Ashlyn Givens and Samuel Sidhu.

(c) Kickoff of Clayton's Certified Farmers' Market for 2015
"Opening Day" is Saturday, May 9th (8:00 am – Noon each Saturday on Diablo Street)
(Jessica Millender, Regional Manager, Pacific Coast Farmers' Market Association)

Jessica Millender, Regional Manager, introduced Jennifer Diggs, Clayton's Certified Farmers' Market Manager for the 2015 season. Ms. Diggs summarized verbally and by a PowerPoint presentation its 2014 Pacific Coast Farmers' Market Annual Report for Clayton's certified farmers' market.

Ms. Millender and Ms. Diggs presented Mayor Shuey and the City Council with baskets of fresh produce and flowers to share.

Mayor Shuey confirmed the Market's 2015 start date of May 9th is from 8:00 am to Noon, and it is located on Diablo Street between Main and Center Streets.

5. REPORTS

(a) Planning Commission – No meeting held.
(b) Trails and Landscaping Committee – No meeting held.
(c) City Manager/Staff – City Manager Gary Napper reported the State Department of Finance recently released its 2015 estimations of population for each city and county in California. Its estimated population for the City of Clayton is 11,288. In 2014, the estimated population was calculated to be 11,209. Mr. Napper advised city population numbers enhance some revenue subventions due the City by state, federal and certain regional governments yet some City annual organization membership fees are also determined by population figures and therefore can cause additional monetary increases.

(d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Haydon attended the general membership meeting of the Clayton Business and Community Association.

Councilmember Pierce attended a meeting of the Metropolitan Transportation Commission. She also attended the Clayton Cleans Up! event hosted by the *Clayton Pioneer*, the Gardens Tour hosted by the Clayton Historical Society, and the Clayton Business and Community Association's annual Art and Wine Festival.

Councilmember Diaz attended the general membership meeting of the Clayton Business and Community Association. He was also in attendance at Clayton Cleans Up!, Clayton Business and Community Association's annual Art and Wine Festival, and a League of California Cities event at Campo di Bocce in Livermore. Councilmember Diaz announced he will not be in attendance at the next City Council meeting as he was asked to be an honor guard at the upcoming 60th Anniversary of Disneyland.

Vice Mayor Geller attended a general membership meeting of the Clayton Business and Community Association, and represented Clayton in the East Contra Costa Conservancy meeting. He also attended the Clayton Cleans Up! event, and the Clayton Business and Community Association's annual Art and Wine Festival. Mr. Geller announced the 2015 Saturday Concerts in The Grove have returned with "Department of Rock" as the season opener on May 9th.

Mayor Shuey attended the Clayton Cleans Up! Event and thanked the *Clayton Pioneer* for their continued efforts. He also attended the Clayton Business and Community Association's annual Art and Wine Festival. He advised proceeds from the Art and Wine Festival are reinvested in the Clayton community supporting various projects, local organizations, schools, and scholarships. He also encouraged anyone looking to become a member of the Clayton Business and Community Association to check out their website at claytoncbca.org for more information.

(e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Marcy Moss expressed her concerns about safety and security in Clayton's downtown area, specifically The Grove Park, sharing that her son was recently attacked there by another youth. It is her observation that recent activity that has occurred in the area generally increased over time, including vandalism, selling of drugs, bullying and violence; it has made the downtown area undesirable. Mrs. Moss thanked the Clayton Police Department for their increased efforts in patrolling the area; however, additional police presence is needed to include foot patrol and driving around the park. One of the reasons Mrs. Moss and her family moved to Clayton was the area was known as a safe small city.

Mayor Shuey acknowledged his awareness of the incident that took place involving Mrs. Moss' son; he suggested assistance from the Parent Faculty Clubs at Mt. Diablo Elementary and Diablo View Middle schools. They may be able to arrange adult monitoring or have adult presence at The Grove Park after school, especially on early-release school days on Wednesdays and Fridays.

Chief of Police Chris Thorsen acknowledged the incident that occurred to Mrs. Moss's son, although technically it was not at The Grove Park but in the downtown area, along with some of her other concerns of recent activity. Chief Thorsen provided a brief history of the staffing levels at the Clayton Police Department and a snapshot of the Clayton Police Department events that occurred on the day Mrs. Moss' son was assaulted. He furthered clarified that no one called the Clayton Police Department about the incident; rather, while Clayton police were on patrol they noticed a couple of girls upset near the park and pulled over to find out what happened. Chief Thorsen concluded by noting "safe" does not mean a crime free environment. However, Clayton had only 2 Part 1 crimes in all of 2014.

Mayor Shuey asked if Clayton police officers are present in The Grove Park and surrounding downtown area on patrol after school days on Wednesday and Friday? Chief Thorsen advised officers are indeed on patrol in the downtown area and The Grove Park during after school hours, especially on Wednesdays and Fridays as those areas are the busiest times in the downtown. However, at any time they can be called away by other reported activity. He also added the simplest solution for the community is to the save the Police Department telephone number into one's cellular phone so it will be easier to notify the Police Department to report incidents as they occur.

Mayor Shuey added the City Council is unable to take action on this item as it is not an agenda item. He highly recommended parents should consider making more of a presence in the downtown area after school hours.

Vice Mayor Geller thanked the Clayton Police Department for their hard work and asked if the police cadets could be available to patrol the downtown area? Chief Thorsen advised the cadets are not much older than high school students, and reminded the community to please call the Police and not attempt to take matters into their own hands.

Mayor Shuey advised when The Grove Park was in development stages sight-lines and low fences were considerations for police officer visibility from patrol cars. He also added recurring vandalism to the gazebo in The Grove Park has increased with slats being broken frequently and trash and litter worse every Friday.

Councilmember Pierce thanked Mrs. Moss for bringing her concerns to the City Council and the City will follow up with any appropriate solutions.

7. <u>PUBLIC HEARINGS</u> – None.

8. <u>ACTION ITEMS</u>

(a) Consider the adoption of Resolution No. 15-2015 awarding a low-bid contract to MCK Services, Inc. in the amount of $867,373.21 for construction of the 2015-16 Neighborhood Street Pavement Rehabilitation Project (CIP No. 10424).

City Engineer Rick Angrisani presented the staff report noting at the Clayton City Council meeting of February 17, 2015 the City Council directed staff regarding which streets should be included in the 2015-16 Neighborhood Street Pavement Rehabilitation Project based on the industry standard Pavement Condition Index. On April 17, 2015 the City Clerk opened three bids received for the advertised public works project with the lowest bid coming in from MCK Services, Inc. in the amount of $867,373.21. The bid included paving work, ADA improvements for $79,200, replacement of Contra Costa Water District valve cans for $21,735, and the net amount for paving related work for $766,438.21. The low bid pavement cost was approximately $78,000.00 higher than the original estimate. The funding shortfall is also exacerbated by the $79,200.00 for the required ADA curb ramp improvements now mandated by federal law whenever an adjacent street is repaved. To compensate for the funding shortfall, two candidate streets with the highest Pavement Condition Index, Haviland Place and Miwok Way, will be removed from the 2015-16 Neighborhood Street Rehabilitation list at this time. The project is expected to commence the last week of May 2015 with completion expected by the end of July 2015.

Mayor Shuey asked for clarification of the funding resources? City Engineer Rick Angrisani advised funds for the project will come from Gas Tax $350,807, Measure J per capita and 28A monies totaling $377,152, the City's ADA compliance program $28,000 (CIP Project No. 10394A), and Contra Costa Water District will pay for the $18,270 water valve can work only.

Councilmember Haydon asked if any of the work proposed will occur in the current Fiscal Year? Councilmember Pierce clarified the Measure J funding resource comes from the half cent sales tax passed by voters in 2004, which covers more than half of the estimated project amount. She is also proud our City has one of the highest Pavement Condition Index ratings in Contra Costa County (PCI of 83), and she appreciates the diligence of the City Council and staff in maintaining the streets for betterment of the community; citizens can see their tax dollars at work.

Mayor Shuey asked City Attorney Mala Subramanian if the contract included with the staff report was up to date with current regulations? City Attorney Mala Subramanian responded she reviewed the contract and confirmed it is up to date with current regulations.

Mayor Shuey opened the item to receive public comments; no public comments were offered.

It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to adopt the Resolution approving and authorizing the execution of a contract in the amount of $867,373.21 with MCK Services, Inc. for the 2015 Pavement Rehabilitation Project (CIP Project No. 10424). (Passed; 5-0 vote).

(b) Consider Resolutions authorizing participation in the State of California Property Assessed Clean Energy (PACE) Programs within the city of Clayton, consisting of the CaliforniaFirst, the Figtree, and the HERO Programs.

Community Development Director Charlie Mullen presented the staff report noting one of the City of Clayton's 2015 – 2023 Housing Element Goals is to encourage and maintain energy efficiency in new and existing housing stock and explore home energy and water efficiency improvement financing opportunities available through PACE Programs such as HERO or Figtree. In 2008 the State of California approved Assembly Bill 811 amending the Improvement Act of 1911, allowing cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by private real property owners. PACE programs allow residential and commercial property owners located within a participating district to finance up to 100% of the cost for energy and water efficiency and renewable energy projects with little or no up-front costs, and then pay it off overtime as a voluntary property tax assessment through their existing property tax bill. A PACE program is merely one financing option to conventional loans or cash payments for such improvements. In order for private property owners in a jurisdiction to access PACE financing, the jurisdiction must create or join an existing special tax district which specifically authorizes contracts between that special tax district's PACE program administrator and property owners seeking PACE financing.

Mr. Mullen advised that all three PACE program operators were invited to send representatives to attend the City Council meeting this evening to provide answers to any questions the City Council may have about their programs. Only Ms. Oriana Yanes, a representative from the HERO program, is in attendance this evening.

Vice Mayor Geller expressed his concerns of homeowners potentially over extending themselves financially on a loan for energy saving improvements based on their home equity.

Oriana Yanes, a representative from the HERO program, advised the financing portion of the HERO program is designed to work within the current financial means of the homeowners. She outlined several of the qualifications required for consideration such as not being late with current property tax payments in the last twelve months, current equity of the home must be at least 10% of the value, and no active bankruptcies in the past seven years. Ms. Yanes advised about 70% of the initially-interested buyers qualify for HERO financing and some of the interest from the loan is tax deductible.

Councilmember Haydon asked if other Energy Efficient Home Loans are available? Ms. Yanes advised there are indeed other financing options available to the consumer.

Mayor Shuey asked if the JPA the City is required to join is ever sued, must the City provide the funds for its defense or will the JPA indemnify member cities? City Attorney Mala Subramanian advised Indemnification language is included in the contract with each PACE program. Ms. Subramanian advised she can answer for the Figtree program but her law firm represents the HERO program in Riverside and that presents a conflict of interest for her to advise the Council regarding the HERO program. Further staff research will need to be conducted regarding the question of City indemnity by Joint Powers Agreements. If that is the pleasure of the City Council, staff could provide the JPA responses at the next regular City Council meeting.

Mayor Shuey advised he would like to continue this item for clarification of indemnification of the City by the special district or the JPA facilitating the PACE programs before making a decision whether this City should provide its citizens with the State of California Property Assessed Clean Energy Program options.

City Manager Gary Napper noted it may not be likely such indemnity will be offered by the parent JPA or special district and in that event it will be a policy decision for the City Council whether the community benefit is worth the potential risk or exposure.

Mayor Shuey opened the item to receive public comments; no public comments were offered.

No formal action was taken on this item. The item was continued to the next regular City Council meeting.

(c) Continued discussion of current land use designation(s) for ground floor land uses and alternative(s) for possible amendments to the City's General Plan Zoning Code, and/or Town Center Specific Plan concerning public and privately-owned real properties in the Clayton Town Center (downtown).

City Manager Gary Napper referred the City Council to the overhead display of a property owner map of the Clayton downtown area; the City owns several parcels in the downtown area with several marketed for sale. He indicated the City Council recently renewed its contract with Transwestern commercial brokerage following one year of listing and the City did receive a few offers involving limited retail commercial land uses on ground floor adjacent to the street but incorporating other types of residential use on the remaining portions of land. Given Transwestern's extensive outreach to retailers, potential commercial investors indicate the property locations are remote and removed from major retailers and preferred population numbers. The policy question before the City Council is if it is willing to allow for different uses on ground floor other then what the property is zoned for, and if so what types of land uses would be of consideration? Mr. Napper then introduced Mr. Colby Mikulich, Vice President handling commercial retail with Transwestern, and Mr. Matt Hatfield with Transwestern, for further input and response to Council questions.

Colby Mikulich advised the properties available in Clayton are about 1/5th the size preferred by today's retailers. Mr. Mikulich attends the International Conferences of Shopping Centers which allows for immediate face-to-face meetings with potential retailers on available properties; unfortunately, the lack of population density is a huge issue with the properties listed in Clayton. The population density is typically based on a 1-5 mile radius and insufficient numbers exist to attract commercial retailers.

Vice Mayor Geller asked if it would be okay to discuss the offers that have been presented to the Council Sub-Committee on Economic Development and City staff? City Attorney Mala Subramanian advised the City Council itself must vote and agree to talk about land offers received before releasing any closed session information. City Manager Napper referenced the Brown Act which expressly allows a City Council to discuss real property offers in closed session so as not to disturb sensitive negotiations and confidentialities. Councilmember Pierce indicated she would not choose to discuss the particulars of the offers received publicly but did add each offer did not fully comply with specific Town Center uses.

Mr. Mikulich advised new construction retail costs approximately $350 per square foot to build, while an existing structure costs approximately $165 to $250 per square foot.

Councilmember Pierce asked how the City Council should go from here; offers received to date were not the vision it was looking for yet the property has not been developed for the last 25 years. Will the property become more viable in the next 10 – 20 years? She expressed concerns of the unreimbursed expenses for Transwestern to continue marketing the City properties for commercial land uses not attracting any retail developers, and thought a better route might be to have developers make suggestions for the development of the City's properties.

Mr. Mikulich added communication is a priority when asking venue developers what they can bring to the City; he expressed the continued interest of Tranwestern to represent the City on these opportunities.

Mayor Shuey invited former Mayor Pete Laurence to provide his input on the Town Center. Mr. Laurence inquired on the listing price of the available properties?

City Manager Napper advised no price was specifically set on the City -owned parcels as the City wanted to be open to negotiate any possibility. The City has approximately $1.044 million invested in the larger parcel which was purchased from the Clayton Community Church; the three smaller parcels on Oak Street were acquired long ago by the City and have an entitled mixed use development plan approved by the City through its former Redevelopment Agency.

Mayor Shuey added the Council Sub-Committee on Economic Development decided not to list a price to allow the opportunity for more options on the properties.

Pete Laurence responded no wonder no offers have been made; who would buy a home that did not list a price? He advised the vision of the Council for the Town Center was to not become a Walnut Creek or Concord; rather, keep the downtown community friendly for events such as the 4th of July parade, Clayton Business and Community Association's annual Art and Wine and other community events which currently draw thousands of people to Clayton. He does not favor the idea of changing the feel of the downtown area; the City should be promoting this area as a starting point for hikers and the variety of trail systems available, we are still coming out of an economic recession and it would be shortsighted to sell now; wait another 3-4 years until 2019 and people will be knocking down the door to get property in Clayton for retail. He is against any ground floor space for residential.

Councilmember Haydon would like to keep the focus on the City owned parcels and find a way to make them more marketable for additional revenue.

Vice Mayor Geller referred a timeline of City studies of the Downtown distributed by staff at this meeting noting numerous contractual studies have already been conducted on the downtown: December 1988 a Market Analysis/Study for the Town Center Specific Plan; July 1998 a study on economic development potentials; December 1998 land use/site analyses; and September 2008 Downtown Retail Study Report and Recommendations (paid by Clayton Redevelopment Agency). He prefers to listen to today's experts and their ideas on a viable downtown. The City has built a wonderful park to draw the community to the downtown and Lemke built a shopping center. He posed several questions regarding the Town Center: Would retail survive? Stay open? How much retail does Clayton need? Would there be any other mixed uses that we would consider?

Pete Laurence responded when those discussions of the downtown area occurred, sewers and other improvements were not in place.

Councilmember Diaz would like to continue the current process with Transwestern and would encourage more input and rational decisions on how to proceed.

Mayor Shuey likes the idea of asking the developers present suggestions for the development of the properties to the Council Sub-Committee on Economic Development or the City Council.

Mr. Mikulich indicated Transwestern will shortly attend an upcoming International Shopping Center convention in Las Vegas and will still market the City-owned available properties in downtown Clayton at the convention.

Councilmember Haydon understands the community's sensitivity to the Clayton downtown area and would like suggested uses to be initially presented to the Council Sub-Committee on Economic Development with a report to the City Council and community input on any changes made to the Town Center plan.

Mayor Shuey opened the item to receive public comments; no further public comments were offered.

No formal action was taken on this item; there was general Council consensus to allow Transwestern to market the City-owned properties for other uses and potentials.

9. COUNCIL ITEMS – None.

10. CLOSED SESSION

(a) *Government Code Section 54957.6*, Conference with Labor Negotiator.
Instructions to City-designated labor negotiator: City Manager
Employee Organization: Clayton Police Officers' Association (CPOA)

On announcement by Mayor Shuey, the City Council went into Closed Session for the purpose noted above at 9:30 p.m.

Report Out from Closed Session (10:24 p.m.): Mayor Shuey reported the City Council received information from its negotiator and gave general direction to staff.

11. **CONTINUE REGULAR MEETING**
It was moved by Councilmember Pierce, seconded by Councilmember Haydon, that the City Council continue this Closed Session matter to an Adjourned Regular Meeting to be held in the 1st Floor Conference Room of Clayton City Hall, 6000 Heritage Trail, Clayton, CA, on Tuesday May 12, 2015 at 9:00 a.m. (Passed, 5-0 vote).

12. **ADJOURNMENT**– on call by Mayor Shuey, the City Council adjourned this meeting at 10:25 p.m. to Tuesday, May 12, 2015 at 9:00 a.m. in the 1st Floor Conference Room of Clayton City Hall.

The next regularly scheduled City Council meeting is May 19, 2015.

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Respectfully submitted,

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Janet Brown, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

____
David T. Shuey, Mayor

# # # # #

MINUTES
OF THE
ADJOURNED REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, May 12, 2015

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 9:14 a.m. by Vice Mayor Geller in the 1st Floor Conference Room, Clayton City Hall, 6000 Heritage Trail, Clayton, CA. Councilmembers present: Vice Mayor Geller, Councilmembers Diaz, Haydon and Pierce. Councilmembers absent: Mayor Shuey. Staff present: City Manager Gary Napper.

2. **PUBLIC COMMENTS** – None.

3. **CLOSED SESSION**
On call by Vice Mayor Geller, the City Council went into a closed session meeting for the stated purpose outlined below:

(a) Government Code Section 54957.6, Conference with Labor Negotiator
Instructions to City-designated labor negotiator: City Manager.

1. Employee Organization: Clayton Police Officers' Association (CPOA).

At 10:14 a.m., the City Council returned to open public session.

It was moved by Vice Mayor Geller, seconded by Councilmember Diaz to recess the adjourned meeting until 4:30 p.m. this day, May 12, 2015 (Passed; 4-0 vote).

4. **RECONVENE THE CITY COUNCIL MEETING**

Mayor Shuey reconvened the public meeting at 4:35 p.m. Councilmembers present: Mayor Shuey, Vice Mayor Geller, Councilmembers Diaz (4:40 p.m.), Haydon and Pierce. Staff present: City Manager Gary Napper.

On call by Mayor Shuey, the City Council went into a closed session meeting under Government Code Section 54957.6, Conference with Labor Negotiator.

5:15 p.m. Report out from Closed Session
Mayor Shuey re-opened the public meeting and announced the Council received and discussed information and gave instructions to its labor negotiator.

5. **ADJOURNMENT**– on call by Mayor Shuey the meeting adjourned at 5:16 p.m.

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Respectfully submitted,

Janet Brown, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

David T. Shuey, Mayor

CITY OF CLAYTON
Founded 1857 .. Incorporated 1964

Agenda Date 5/19/2015

Agenda Item: 3b

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Kevin Mizuno, FINANCE MANAGER

DATE: 5/19/2015

SUBJECT: FINANCIAL OBLIGATIONS

RECOMMENDATION:

Approve the following Invoices:

5/15/2015	Cash Requirements	$ 113,311.08
5/12/2015	Payroll, PPE 5/10/15, Pay 5/13/15	$ 84,051.13
	Total	**$ 197,362.21**

Attachments:
Cash Requirements Report dated 5/15/2015 (4 pages)
ADP Report Week 20, PPE 05/10/15 (1 page)

City of Clayton
Cash Requirements Report
City Council Meeting 5/19/15

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
American Fidelity Assurance Company								
American Fidelity Assurance Company	5/19/2015	5/11/2015	1183550A	April FSA	$610.00	$0.00		$610.00
American Fidelity Assurance Company	5/19/2015	5/15/2015	B311817	June Supplemental Insurance	$356.72	$0.00		$356.72
				Totals for American Fidelity Assurance Company:	*$966.72*	*$0.00*		*$966.72*
Bay Area Barricade Serv.								
Bay Area Barricade Serv.	5/19/2015	5/13/2015	0317477-IN	24" cardboard reflective signs x 14	$87.75	$0.00		$87.75
				Totals for Bay Area Barricade Serv.:	*$87.75*	*$0.00*		*$87.75*
Bay Area News Group East Bay (CCT)								
Bay Area News Group East Bay (CCT)	5/19/2015	5/11/2015	0000869073	Advertising for Seasonal Landscape Workers	$1,117.00	$0.00		$1,117.00
Bay Area News Group East Bay (CCT)	5/19/2015	5/13/2015	0000869072	Legals for Neighborhood Street Project 2015	$1,265.86	$0.00		$1,265.86
				Totals for Bay Area News Group East Bay (CCT):	*$2,382.86*	*$0.00*		*$2,382.86*
Big Band Beat								
Big Band Beat	5/19/2015	5/11/2015	052315	Concert in the Grove 5/23/15	$2,000.00	$0.00		$2,000.00
				Totals for Big Band Beat:	*$2,000.00*	*$0.00*		*$2,000.00*
Burkett's Pool Plastering, Inc								
Burkett's Pool Plastering, Inc	5/19/2015	5/11/2015	CAP0142	Deposit Refund for 1360 Yosemite Circle - P	$1,809.09	$0.00		$1,809.09
				Totals for Burkett's Pool Plastering, Inc:	*$1,809.09*	*$0.00*		*$1,809.09*
CalPERS Retirement								
CalPERS Retirement	5/19/2015	5/11/2015	GASB 68	GASB 68 actuary reports FY 15 Audit	$4,250.00	$0.00		$4,250.00
CalPERS Retirement	5/19/2015	5/13/2015	CC 5/24/15	City Council retirement ending 5/24/15	$286.29	$0.00		$286.29
CalPERS Retirement	5/19/2015	5/13/2015	PPE 5/10/15	retirement PPE 5/10/15	$20,979.33	$0.00		$20,979.33
				Totals for CalPERS Retirement:	*$25,515.62*	*$0.00*		*$25,515.62*
CCWD								
CCWD	5/19/2015	5/15/2015	K Series	service 3/4/15-5/4/15	$16,788.83	$0.00		$16,788.83
				Totals for CCWD:	*$16,788.83*	*$0.00*		*$16,788.83*
Clean Street								
Clean Street	5/19/2015	5/11/2015	78126	Monthly Sweep Fee for April 2015	$3,500.00	$0.00		$3,500.00
				Totals for Clean Street:	*$3,500.00*	*$0.00*		*$3,500.00*
Comcast								
Comcast	5/19/2015	5/13/2015	5/5/15	high speed internet 5/10/15-6/9/15	$403.95	$0.00		$403.95
				Totals for Comcast:	*$403.95*	*$0.00*		*$403.95*
Contra Costa County Library								
Contra Costa County Library	5/19/2015	5/11/2015	Q3 FY 14-15	Additional Library Service for Q3 FY 14/15	$4,693.35	$0.00		$4,693.35
				Totals for Contra Costa County Library:	*$4,693.35*	*$0.00*		*$4,693.35*
Contra Costa Topsoil								

City of Clayton
Cash Requirements Report
City Council Meeting 5/19/15

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Contra Costa Topsoil	5/19/2015	5/13/2015	114963	Cedar-114963 45 Yds	$1,904.18	$0.00		$1,904.18
				Totals for Contra Costa Topsoil:	*$1,904.18*	*$0.00*		*$1,904.18*
Contra Costa Tractor Mobile Svc								
Contra Costa Tractor Mobile Svc	5/19/2015	5/13/2015	016745	service call for 260C	$1,448.14	$0.00		$1,448.14
				Totals for Contra Costa Tractor Mobile Svc:	*$1,448.14*	*$0.00*		*$1,448.14*
Dig & Demo								
Dig & Demo	5/19/2015	5/11/2015	CAP0152	Deposit refund for 159 Mountaire Pkwy - Poo	$1,904.54	$0.00		$1,904.54
				Totals for Dig & Demo:	*$1,904.54*	*$0.00*		*$1,904.54*
Geoconsultants, Inc.								
Geoconsultants, Inc.	5/19/2015	5/11/2015	18733	well monitoring for April 2015	$1,546.50	$0.00		$1,546.50
				Totals for Geoconsultants, Inc.:	*$1,546.50*	*$0.00*		*$1,546.50*
Hammons Supply Company								
Hammons Supply Company	5/19/2015	5/13/2015	87777-1	City Hall Supplies	$68.83	$0.00		$68.83
				Totals for Hammons Supply Company:	*$68.83*	*$0.00*		*$68.83*
HUB Inter of CA Ins Svc								
HUB Inter of CA Ins Svc	5/19/2015	5/11/2015	April 2015	Insurance for April 2015	$91.92	$0.00		$91.92
HUB Inter of CA Ins Svc	5/19/2015	5/11/2015	March 2015	Insurance for March 2015	$169.32	$0.00		$169.32
				Totals for HUB Inter of CA Ins Svc:	*$261.24*	*$0.00*		*$261.24*
J & R Floor Services								
J & R Floor Services	5/19/2015	5/11/2015	four	April Billing	$4,880.00	$0.00		$4,880.00
				Totals for J & R Floor Services:	*$4,880.00*	*$0.00*		*$4,880.00*
Ken Joiret								
Ken Joiret	5/19/2015	5/11/2015	052315	Sound for Concert in the Park - Big Band Bea	$650.00	$0.00		$650.00
				Totals for Ken Joiret:	*$650.00*	*$0.00*		*$650.00*
LarryLogic Productions								
LarryLogic Productions	5/19/2015	5/11/2015	1500	City Council Meeting 5/5/15	$350.00	$0.00		$350.00
				Totals for LarryLogic Productions:	*$350.00*	*$0.00*		*$350.00*
Marken Mechanical Services Inc								
Marken Mechanical Services Inc	5/19/2015	5/13/2015	115-20216	City Hall Service Call	$355.00	$0.00		$355.00
Marken Mechanical Services Inc	5/19/2015	5/13/2015	415-1151-5	City Hall Maintenance for May 2015	$150.00	$0.00		$150.00
Marken Mechanical Services Inc	5/19/2015	5/13/2015	115-20227	City Hall - Service Call, 1st floor conference r	$992.49	$0.00		$992.49
Marken Mechanical Services Inc	5/19/2015	5/13/2015	415-1152-5	Library Maintenance for May 2015	$150.00	$0.00		$150.00
				Totals for Marken Mechanical Services Inc:	*$1,647.49*	*$0.00*		*$1,647.49*
Martell Water Systems, Inc.								
Martell Wa[illegible]ystems, Inc.	5/19/2015	5/13/2015	21860	Service ca[illegible]24/15, 4/28/15, Library	$1,559.09	$0.00		$1,559.09
Martell W[illegible]stems, Inc.	5/19/2015	5/13/2015	21867	Supplies, [illegible]e call - 4/15/15-4/30/15, Eagl	$1,919.95	$0.00		$1,919.95

City of Clayton
Cash Requirements Report
City Council Meeting 5/19/15

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
				Totals for Martell Water Systems, Inc.:	*$3,479.04*	*$0.00*		*$3,479.04*
Miracle Play Systems, Inc								
Miracle Play Systems, Inc	5/19/2015	5/13/2015	I2015-0091	Re-do water feature, Grove Park	$15,603.37	$0.00		$15,603.37
Miracle Play Systems, Inc	5/19/2015	5/13/2015	I2015-0122	Change order for mastic, Water Feature-Grove	$665.00	$0.00		$665.00
				Totals for Miracle Play Systems, Inc:	*$16,268.37*	*$0.00*		*$16,268.37*
Neopost Northwest								
Neopost Northwest	5/19/2015	5/11/2015	N5315219	Contract for 6/7/15-7/6/15	$158.20	$0.00		$158.20
				Totals for Neopost Northwest:	*$158.20*	*$0.00*		*$158.20*
Paramount Elevator Corp.								
Paramount Elevator Corp.	5/19/2015	5/13/2015	1394	January-March Services	$220.00	$0.00		$220.00
				Totals for Paramount Elevator Corp.:	*$220.00*	*$0.00*		*$220.00*
PERMCO, Inc.								
PERMCO, Inc.	5/19/2015	5/11/2015	10348	Review application, meeting with Owner & E	$1,350.00	$0.00		$1,350.00
PERMCO, Inc.	5/19/2015	5/13/2015	10375	Services 4/25/15-5/8/15	$4,666.50	$0.00		$4,666.50
PERMCO, Inc.	5/19/2015	5/13/2015	10376	CAP Inspections 4/25/15-5/8/15	$166.00	$0.00		$166.00
PERMCO, Inc.	5/19/2015	5/13/2015	10377	Prep of prelim plans for Caltrans	$163.75	$0.00		$163.75
PERMCO, Inc.	5/19/2015	5/13/2015	10378	prepare contract, transmittal, & chg order #1	$610.00	$0.00		$610.00
PERMCO, Inc.	5/19/2015	5/13/2015	10379	Discussions with PG&E	$150.00	$0.00		$150.00
				Totals for PERMCO, Inc.:	*$7,106.25*	*$0.00*		*$7,106.25*
PG&E								
PG&E	5/19/2015	5/11/2015	21131511004	Diablo Pointe 3/24/15-4/22/15	$33.67	$0.00		$33.67
				Totals for PG&E:	*$33.67*	*$0.00*		*$33.67*
Rock & Waterfall Co								
Rock & Waterfall Co	5/19/2015	5/13/2015	122-42	waterfall maintenance	$650.00	$0.00		$650.00
				Totals for Rock & Waterfall Co:	*$650.00*	*$0.00*		*$650.00*
SPRAYTEC								
SPRAYTEC	5/19/2015	5/13/2015	13028	maintenance for 2/14 & 2/28	$225.00	$0.00		$225.00
SPRAYTEC	5/19/2015	5/13/2015	13031	maintenance for 3/11 & 3/25	$225.00	$0.00		$225.00
SPRAYTEC	5/19/2015	5/13/2015	13034	maintenance for 4/17/15	$225.00	$0.00		$225.00
				Totals for SPRAYTEC:	*$675.00*	*$0.00*		*$675.00*
Sprint Comm (PW & ADM)								
Sprint Comm (PW & ADM)	5/19/2015	5/13/2015	531409315-156	service 3/26/15-4/25/15	$276.52	$0.00		$276.52
				Totals for Sprint Comm (PW & ADM):	*$276.52*	*$0.00*		*$276.52*
US Bank Corp Pymt System (Cal Card)								
US Bank Corp Pymt System (Cal Card)	5/19/2015	5/15/2015	Stmt 4/23/15	Statement Ending 4/23/15	$8,930.40	$0.00		$8,930.40
				Totals for US Bank Corp Pymt System (Cal Card):	*$8,930.40*	*$0.00*		*$8,930.40*

City of Clayton
Cash Requirements Report
City Council Meeting 5/19/15

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Waraner Brothers Tree Service								
Waraner Brothers Tree Service	5/19/2015	5/13/2015	11952	Peacock Creek/Clayton Rd - removed sycamo	$200.00	$0.00		$200.00
Waraner Brothers Tree Service	5/19/2015	5/13/2015	11953	Clayton Rd near Peacock Creek side pruned e	$600.00	$0.00		$600.00
				Totals for Waraner Brothers Tree Service:	*$800.00*	*$0.00*		*$800.00*
ZLC Corp								
ZLC Corp	5/19/2015	5/11/2015	CAP0155	Deposit refund for 798 Bloching Circle - Pool	$1,904.54	$0.00		$1,904.54
				Totals for ZLC Corp:	*$1,904.54*	*$0.00*		*$1,904.54*
				GRAND TOTALS:	**$113,311.08**	**$0.00**		**$113,311.08**

0 Employees With Overflow Statement
0 Overflow Statement 1 Total Statement
Tot Cks/Vchrs:00000000040 Tot Docs in all:00000000043

	First No.	Last No.	Total
Checks:	ADPCHECK	ADPCHECK	00000000005
Vouchers:	00000200001	00000200035	00000000035

Earnings Statement

Z7L TOTAL DOCUMENT
CITY OF CLAYTON
LOCATION 0001

CHECK STUFFING, RECONCILIATION

84051.13	GROSS
61536.66	NET PAY (INCLUDING ALL DEPOSITS)
9468.36	FEDERAL TAX
200.24	SOCIAL SECURITY
1155.67	MEDICARE
.00	MEDICARE SURTAX
.00	SUI TAX
3085.60	STATE TAX
.00	LOCAL TAX
67976.59	DEDUCTIONS
2164.67	NET CHECK

COMPANY CODE Z7L
CITY OF CLAYTON
TOTAL DOCUMENT
LOCATION 0001

VERIFY DOCUMENT AUTHENTICITY - COLORED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM

NON-NEGOTIABLE - VOID - NON-NEGOTIABLE
NON-NEGOTIABLE - VOID - NON-NEGOTIABLE
NON-NEGOTIABLE - VOID - NON-NEGOTIABLE
NON-NEGOTIABLE - VOID - NON-NEGOTIABLE
NON-NEGOTIABLE - VOID - NON-NEGOTIABLE
NON-NEGOTIABLE - VOID - NON-NEGOTIABLE
NON-NEGOTIABLE - VOID - NON-NEGOTIABLE
NON-NEGOTIABLE - VOID - NON-NEGOTIABLE

Agenda Date: 5-19-2015
Agenda Item: 3c

CITY OF CLAYTON
Founded 1857 . . Incorporated 1964

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MAINTNENANCE SUPERVISOR

DATE: MAY 19 2015

SUBJECT: RESOLUTION ACCEPTING THE REMOVAL AND REPLACEMENT OF THE RESILIENT PLAY SURFACE AT THE TOT LOT OF THE GROVE PARK AS COMPLETE, AND ORDERING THE FILING OF A NOTICE OF COMPLETION.

RECOMMENDATION

Adopt Resolution.

BACKGROUND

The contractor, Miracle PlaySystem, Incorporated, has completed removal and replacement of the Resilient Play Surface at the tot lot of The Grove Park and has requested acceptance of the work. The City's Maintenance Department Supervisors have completed inspection of the new improvements and recommend acceptance of the work as complete.

FISCAL IMPACT

On December 16, 2014, the City Council approved a competitive-award contract and project budget in the amount of $54,605.61 for the removal and installation of the Resilient Play Surface at the tot lot of The Grove Park. Source of funds was from The Grove Park unobligated reserve (Fund 211). The project was completed for the allocated budget amount of $54,605.61.

CONCLUSION

The project is complete and the work performed has satisfied the project's specifications. Therefore, Staff recommends approval of this Resolution accepting the work as complete, ordering the filing of a Notice of Completion, and then payment of all retained funds 35 days after filing of the Notice.

Attachments: Resolution
Notice of Completion

RESOLUTION NO. - 2015

A RESOLUTION ACCEPTING THE REMOVAL AND REPLACEMENT OF THE RESILIENT PLAY SURFACE AT THE TOT LOT OF THE GROVE PARK AS COMPLETE AND ORDERING THE FILING OF A NOTICE OF COMPLETION

THE CITY COUNCIL
City of Clayton, California

WHEREAS, on December 16, 2014, the City Council of Clayton, CA did award a competitive contract to Miracle PlaySystems, Incorporated for the replacement of The Grove Park Resilient Play Surface, said Project to be known as the Removal and Replacement of the Resilient Play Surface at the tot lot of The Grove Park; and

WHEREAS, Miracle PlaySystems, Inc. has now represented its work is complete and it requests project acceptance by the City; and

WHEREAS, the City's Maintenance Department Supervisors have inspected the work performed, have declared the contract has been fulfilled in accordance with project specifications, and City staff now requests the City Council to accept the work as complete and authorize the filing of a Notice of Completion in order to release retained project funds to the contractor;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Clayton, California does hereby accept as completed, as of the date of adoption of this Resolution, the Removal and Replacement of the Resilient Play Surface at the tot lot of The Grove Park, hereby authorizes the City Clerk to file a Notice of Completion with the County Recorder, and further authorizes the release of the contract retention funds after the required thirty-five (35) day waiting period.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 19th day of May 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

____
David T. Shuey, Mayor

ATTEST:

____
Janet Brown, City Clerk

# # # # #

I hereby certify that the foregoing Resolution was duly and regularly passed by the City Council of the City of Clayton at its regular public meeting held on May 19, 2015.

____
Janet Brown, City Clerk

Recorded at the request of:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517

NOTICE OF ACCEPTANCE AND COMPLETION OF PUBLIC WORKS

NOTICE IS HEREBY GIVEN that the City of Clayton, CA did, on or about January 6, 2015, contract with Miracle PlaySystems, Incorporated, P.O. Box 263, Alamo, CA. 94507 for the installation of The Grove Park Resilient Play Surface in accordance with the plans and specifications prepared by the City of Clayton.

NOTICE IS FURTHER GIVEN that the City of Clayton Maintenance Supervisors have inspected said work of the Contractor and reported that the work complies with the approved plans and specifications and recommended its acceptance as complete; also that the City Council of the City of Clayton, California, by adopting Resolution No.____ on May 19, 2015, accepted said public work as complete.

I hereby certify that the foregoing is true and correct and that the aforesaid action of the City Council of the City of Clayton, in accepting said public work as completed, was duly entered on the minutes of said Council's meeting of May 19, 2015. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 20, 2015, at Clayton, California.

____

Janet Brown, City Clerk

Agenda Date: 5-19-2015
Agenda Item: 3d

CITY OF CLAYTON
Founded 1857.. Incorporated 1964

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MAINTNENANCE SUPERVISOR

DATE: May 19 2015

SUBJECT: RESOLUTION ACCEPTING AS COMPLETE THE REMOVAL AND REPLACEMENT/IMPROVEMENT OF THE WATER PLAY FEATURE AT THE GROVE PARK, AND ORDERING THE FILING OF A NOTICE OF COMPLETION.

RECOMMENDATION

Adopt Resolution.

BACKGROUND

The contractor, Miracle PlaySystem, Inc., has completed removal and replacement/improvement of the Water Play Feature at The Grove Park and has requested acceptance of the work. The City's Maintenance Department has completed inspection of the new improvements and recommends acceptance of the work as complete.

FISCAL IMPACT

On September 16, 2014, the City Council approved a low-bid contract and project budget in the amount of $67,482.71 for the design, utility upgrades, removal, and installation of the Water Play Feature at The Grove Park. Source of funds was from The Grove Park unobligated reserve (Fund 211). The project was completed under the allocated budget amount of $67,482.71 with final project cost totaling $57,612.23.

CONCLUSION

The project is complete and the work performed has satisfied the project's specifications. Therefore, Staff recommends approval of this Resolution accepting the work as complete, ordering the filing of a Notice of Completion and the payment of all retained funds 35 days after filing of the Notice.

Attachments: Resolution
Notice of Completion

RESOLUTION NO. - 2015

A RESOLUTION ACCEPTING THE REMOVAL AND REPLACEMENT/IMPROVEMENT OF THE WATER PLAY FEATURE AT THE GROVE PARK AS COMPLETE AND ORDERING THE FILING OF A NOTICE OF COMPLETION

THE CITY COUNCIL
City of Clayton, California

WHEREAS, on September 16, 2014 the City Council of Clayton did award a competitive contract to Miracle PlaySystems, Incorporated, for the replacement of The Grove Park Water Play Feature, said Project to be known as the removal and replacement of the Water Feature at The Grove Park; and

WHEREAS, Miracle PlaySystems, Incorporated, has now represented to the City its work is complete and it now requests acceptance by the City; and

WHEREAS, the City's Maintenance Department Supervisors inspected the work performed, has declared the contract has been fulfilled in accordance with project specifications, and City staff now requests the City Council to accept the work as complete and authorize the filing of a Notice of Completion in order to release retained project funds to the contractor;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Clayton, California does hereby accept as completed, as of the date of adoption of this Resolution, the removal and replacement of the Water Feature at The Grove Park, hereby authorizes the City Clerk to file a Notice of Completion with the County Recorder, and further authorizes the release of the contract retention funds after the required thirty-five (35) day waiting period.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 19th day of May 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

____
David T. Shuey, Mayor

ATTEST:

____
Janet Brown, City Clerk

# # # # #

I hereby certify that the foregoing Resolution was duly and regularly passed by the City Council of the City of Clayton at its regular public meeting held on May 19, 2015.

____
Janet Brown, City Clerk

Recorded at the request of:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517

NOTICE OF ACCEPTANCE
AND COMPLETION OF PUBLIC WORKS

NOTICE IS HEREBY GIVEN that the City of Clayton, CA did, on or about October 31 2014, contract with Miracle PlaySystems, Incorporated, P.O. Box 263, Alamo, California, 94507, for the installation of The Grove Park Water Play Feature in accordance with the plans and specifications prepared by the City of Clayton.

NOTICE IS FURTHER GIVEN that the Clayton Maintenance Department has inspected said work of the Contractor and reported that the work complies with the approved plans and specifications and recommended its acceptance as complete; also that the City Council of the City of Clayton, California, by adopting Resolution No. __-2015 on May 19, 2015, accepted said public work project as complete.

I hereby certify that the foregoing is true and correct and that the aforesaid action of the City Council of the City of Clayton, in accepting said public work as completed, was duly entered on the minutes of said Council's meeting of May 19, 2015. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 20, 2015, at Clayton, California.

____
Janet Brown, City Clerk

Agenda Date: 5-19-2015
Agenda Item: 3e

CITY OF CLAYTON
Founded 1857 .. Incorporated 1964

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: RICK ANGRISANI, CITY ENGINEER

DATE: MAY 19, 2015

SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING THE ENGINEER'S REPORT FOR THE DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT, DECLARING INTENT TO LEVY AND COLLECT ASSESSMENTS FOR FISCAL YEAR 2015-16, AND GIVING NOTICE OF THE TIME AND PLACE FOR A PUBLIC HEARING ON THE LEVY OF THE PROPOSED ASSESSMENTS.

RECOMMENDATION

Adopt the attached Resolution approving the Engineer's Report for the Diablo Estates at Clayton Benefit Assessment District ("BAD"), declaring intent to levy and collect real property assessments within the BAD for fiscal year 2015-16 and giving notice of the time and place for a public hearing.

BACKGROUND

At its May 5, 2015 meeting, the City Council directed the City Engineer to prepare an Engineer's Report in anticipation of levying real property assessments within the BAD for fiscal year 2015-16.

As directed, the City Engineer has prepared and now submits the attached Engineer's Report ("Report") for the Council's consideration. The Report proposes an assessment for fiscal year 2015-16 of $3,241 on each parcel within the District for a total assessment of $77,791. The proposed assessment represents a 2.5% increase (in accordance with the annual increase in the applicable Consumer Price Index) over the FY 2014-15 assessment, as allowed by the original ballot election.

FISCAL IMPACT

There is no impact to the City's General Fund as the requested formation of the BAD called for the assessments to include sufficient revenue to reimburse the City for all administrative costs involved in administering the District in behalf of and for the benefit of the real property owners.

CONCLUSION

Staff recommends the City Council approve the attached Resolution approving the Engineer's Report and calling for a public hearing on July 21, 2015 prior to levying the real property assessments of the BAD for fiscal year 2015-16.

Attachments:
- Resolution
- Notice
- Engineer's Report

RESOLUTION NO. -2015

A RESOLUTION APPROVING THE ENGINEER'S REPORT AND DECLARING INTENT TO LEVY AND COLLECT REAL PROPERTY ASSESSMENTS FOR THE DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT FOR FISCAL YEAR 2015-16, AND GIVING NOTICE OF THE TIME AND PLACE FOR A PUBLIC HEARING ON THE LEVY OF THE PROPOSED ASSESSMENTS.

THE CITY COUNCIL
City of Clayton, California

WHEREAS, by Resolution No. 04-2012, adopted February 7, 2012, the Clayton City Council formed the Diablo Estates At Clayton Benefit Assessment District ("District") pursuant to the provisions of the Landscaping and Lighting Act of 1972 (Government Code Section 22500 et seq.) and the Benefit Assessment Act of 1982 (Government Code Section 54703 et seq.); and

WHEREAS, while the Benefit Assessment Act of 1982 does not require additional actions prior to levying an annual assessment, the Landscaping and Lighting Act of 1972 ("Act") does require the preparation of an annual Engineer's Report and the holding of a public hearing prior to levying of an annual assessment; and

WHEREAS, the City Engineer has prepared the required Engineer's Report and submitted it to the City Council for review and approval; and

WHEREAS, the City Council reviewed the Engineer's Report at its regular public meeting on May 19, 2015 and found same to be satisfactory and in compliance with the Act; and

WHEREAS, it is now necessary for the City Council to approve the Engineer's Report, establish the date for a public hearing on the levying of the proposed assessments for fiscal year 2015-16 and to direct the City Clerk to give the required notice of the public hearing.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of Clayton, California as follows:

1. The Engineer's Report dated May 19, 2015, prepared by the City Engineer as the Engineer for the District, and each part thereof, is sufficient in each particular, has fairly and properly apportioned the cost of the improvement to each parcel of land in the District in proportion to the

estimated benefits to be received by each parcel respectively from such improvements, and is hereby approved as filed.

2. The City Council hereby declares its intent to levy and collect a real property assessment of $3,241.00 on each parcel within the District for a total assessment of $77,791 for fiscal year 2015-16.

3. The Assessment District includes Lots 1 through 24, inclusive, as shown on the map of Subdivision 8719 as was recorded in Book 506 of Maps at Page 45, in the Office of the County Recorder of Contra Costa County and as modified by Lot Line Adjustment Nos. 10-01 (2010-0239196) and 10-02 (2010-0239195).

4. As shown on the Engineer's Report on file with the City Clerk, the District will pay for the cost of maintaining storm drainage collection and treatment facilities, street lighting, landscaping and irrigation, and weed abatement using the proposed assessments during fiscal year 2015-16.

5. **A public hearing will be held on Tuesday, July 21, 2015, at or about the hour of 7:00 p.m., of said day, at a regular City Council public meeting at Hoyer Hall in the Clayton Community Library situated at 6125 Clayton Road, Clayton, California,** the regular public meeting place of the Clayton City Council; any and all persons having any interest in the lands within the Diablo Estates At Clayton Benefit Assessment District, liable to be assessed for the expenses of the District for fiscal year 2015-16, may be heard, and any such persons may also present their protests against the proposed assessments with City Clerk at or before the time set for hearing.

6. The City Clerk shall mail notice of the passage of this Resolution and of the time and place of hearing to each owner of real property within the District, as required by Section 54954.6 of the Government Code.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on 19th day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

____
David T. Shuey, Mayor

ATTEST:

____
Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 19, 2015.

____
Janet Brown, City Clerk

Diablo Estates at Clayton Benefit Assessment District

NOTICE TO PROPERTY OWNERS FOR LEVY OF ASSESSMENT

Reason for Assessment

At the request of the original project developer, Toll Bros., Inc., the City of Clayton City Council ("Council") approved Resolution No. 04-2012 on February 7, 2012, forming the Diablo Estates at Clayton Benefit Assessment District ("District") to fund and to pay for the oversight and maintenance of certain facilities solely benefiting the District such as the stormwater treatment facilities, storm drain collection system, common area landscape and irrigation, private street lighting and weed abatement of natural slope areas, all as described in the original Engineer's Report approved by the Council on March 20, 2012.

Notice

This notice informs you, as a real property owner within the Diablo Estates at Clayton Benefit Assessment District that on May 19, 2015, the Clayton City Council adopted Resolution No. XX-2015 approving an Engineer's Report for FY 2015-16, declaring its intent to levy assessments for fiscal year 2015-16 and setting a public hearing on the issue of the proposed assessments:

PUBLIC HEARING:	**7:00 p.m. July 21, 2015**
Hoyer Hall (Library Meeting Room)	**6125 Clayton Road**

Assessment Information

1. Total District Assessment for the fiscal year beginning on July 1, 2015 and ending June 30, 2016: $77,791.

2. Proposed assessment per parcel: The assessment for each parcel is proposed to be $3,241.00 which includes a 2.5% increase in the existing assessment of $3,162.00 per year in accordance with the annual increase in the applicable Consumer Price Index (Feb. 2014-Feb. 2015; San Francisco-Oakland- San Jose, CA MSA – All Urban Consumers), as allowed by property owner balloting in 2012.

3. Duration of assessment: The assessment will be levied annually at the above proposed rate and collected via one's real property tax bill in fiscal year 2015-16. The assessment may only be increased (other than the authorized allowable annual CPI-U increase described above) in the future by approval of a majority of the property owners.

Questions

If any questions arise regarding the proposed real property assessments for fiscal year 2015-16, please contact the City Engineer Rick Angrisani: he may be reached at 925.363-7433.

ENGINEER'S REPORT

DATE: MAY 19, 2015

TO: CITY COUNCIL

FROM: CITY ENGINEER

RE: DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT FISCAL YEAR 2015-16

This Engineer's Report has been prepared in accordance with the requirements of the Landscaping & Lighting Act of 1972 (Section 22500 et seq. of the Government Code).

HISTORICAL REVIEW

In 2012, at the request of Toll Brothers, the developer of the Diablo Estates at Clayton project (Subd. 8719), the City Council formed the Diablo Estates at Clayton Benefit Assessment District ("District" per Resolution No. 04-2012). The purpose of the District is to generate funds for the maintenance of various improvements constructed as part of the development which solely benefit the real property owner(s). The duties specified in the original Engineer's Report (prepared by SCI Consulting Group, dated March 2012) included maintenance of landscaping and irrigation, weed abatement, storm drainage facilities, and private street lighting.

The District was formed under the auspices of the Landscaping and Lighting Act of 1972 (Section 22500 et seq. of the Government Code) and the Benefit Assessment Act of 1982 (Section 54703 et seq. of the Government Code). The initial per lot annual assessment, approved by the property owner (Toll Bros.), was $3,027.62. The approval also allowed for an annual increase in the assessment amount equal to the annual increase in the Consumer Price Index ("CPI"; San Francisco-Oakland-San Jose CA MSA, All Urban Consumers), not to exceed 4% in any one year.

While the Benefit Assessment Act of 1982 does not require further action prior to the levy of annual assessments, the Landscaping and Lighting Act of 1972 requires the preparation of an Engineer's Report and notice to property owners of a public hearing each year. Since no increase, other than the already authorized and approved CPI increase, is proposed, the provisions of Proposition 218 do not apply.

DETERMINATION OF SPECIAL BENEFIT, METHOD OF ASSESSMENT AND DESCRIPTION OF DISTRICT IMPROVEMENTS

See original Engineer's Report attached hereto and made a part hereof.

ESTIMATED COSTS

The original budget included maintenance and District administrative costs, as well as reserve funds for future replacement of the maintained items. The relevant CPI increase for this past year (February 2014 – February 2015) was 2.5%. Following is a breakdown of the anticipated District costs incorporating the allowable CPI increase:

Item	FY 2014-15 Budget	CPI Increase (2.5%)	FY 2015-16 Budget
District Maintenance:			
Common Area Landscape	$18,593	$465	$19,058
Weed Abatement	$12,440	$311	$12,751
Storm Drain System	$5,745	$144	$5,888
Private Street Lighting	$1,264	$32	$1,295
Sub-Total Maintenance:	$38,041	$941	$38,992
District Administration	$17,652	$441	$18,093
(includes Pinnacle Construction PM Services)			
District Reserves	$20,201	$505	$20,706
Total Annual Budget	**$75,894**	**$1,897**	**$77,791**

RESERVE FUNDS

The fund balance at the end of FY 2014/15 will be approximately $59,000. This balance will increase to approximately $79,500 at the end of FY 2015/16. The purpose of the Reserve is for scheduled and unexpected replacement of the capital investments, per the original Engineer's Report.

PER UNIT ALLOCATION

Based upon the proposed budget, the per-unit assessment will be $3,241.00 ($77,791/24 units).

ASSESSMENT HISTORY

Proposed FY 15-16	$3,241.00
FY 14-15	$3,162.00
FY 13-14	$3,100.26
FY 12-13	$3,027.62

Attachment: Original Engineer's Report (19 pp.)

CITY OF CLAYTON

DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT
FOR LANDSCAPE AND LIGHTING AND BENEFIT ASSESSMENT

ENGINEER'S REPORT
FISCAL YEAR 2012-13

MARCH 2012

PURSUANT TO
THE LANDSCAPING AND LIGHTING ACT OF 1972,
THE BENEFIT ASSESSMENT ACT OF 1982, AND
ARTICLE XIIID OF THE CALIFORNIA CONSTITUTION

ENGINEER OF WORK:
SCIConsultingGroup
4745 MANGELS BOULEVARD
FAIRFIELD, CALIFORNIA 94534
PHONE 707.430.4300
FAX 707.430.4319
www.sci-cg.com

CITY OF CLAYTON

MAYOR

Howard Geller

CITY COUNCIL

Joseph A. Medrano
Julie K. Pierce
David T. Shuey
Hank Stratford

CITY MANAGER

Gary Napper

CITY ENGINEER

Rick Angrisani

CITY ATTORNEY

Malathy Subramanian

CITY CLERK

Laci Jackson

ENGINEER OF WORK

SCI Consulting Group

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INTRODUCTION

BACKGROUND

Formation of the "Diablo Estates at Clayton Benefit Assessment District" (the "Assessment District") within the City of Clayton (the "City") is proposed to provide funding for the maintenance, operation and improvement of the landscaping, street lighting, drainage and stormwater treatment facilities to benefit the properties in the Diablo Estates at Clayton subdivision that forms the Assessment District. The Diablo Estates at Clayton subdivision consists of 24 parcels east of Regency Drive and north of Rialto Drive with an approximate area of 19 acres.

This Engineer's Report (the "Report") was prepared to establish the budget for the services and improvements that would be funded by the proposed 2012-13 assessments and to determine the benefits received from the maintenance and improvements by property within the Assessment District and the method of assessment apportionment to lots and parcels. This Report and the proposed assessments have been made pursuant to the Landscaping and Lighting Act of 1972 and the Benefit Assessment Act of 1982 (the "Acts") and Article XIIID of the California Constitution (the "Article").

Following submittal of this Report to the City of Clayton City Council (the "City Council") for preliminary approval, the City Council may call for an assessment ballot proceeding and Public Hearing on the proposed establishment of assessments for the improvements.

If it is determined at the public hearing that the assessment ballots submitted in opposition to the proposed assessments do not exceed the assessment ballots submitted in favor of the assessments (weighted by the proportional financial obligation of the property for which ballots are submitted), the City Council may take action to form the Assessment District and approve the levy of the assessments for fiscal year 2012-13. If the assessments are so confirmed and approved, the levies would be submitted to the County Auditor/Controller in August 2012 for inclusion on the property tax roll for Fiscal Year 2012-13.

LEGISLATIVE ANALYSIS

PROPOSITION 218

The Right to Vote on Taxes Act was approved by the voters of California on November 6, 1996, and is now Article XIIIC and XIIID of the California Constitution. Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services, improvements, as well as maintenance and operation expenses to a public improvement which benefits the assessed property. This Assessment District will be balloted and approved by property owners in accordance with Proposition 218.

SILICON VALLEY TAXPAYERS ASSOC., INC. V SANTA CLARA COUNTY OPEN SPACE AUTHORITY

In July of 2008, the California Supreme Court issued its ruling on the Silicon Valley Taxpayers Association, Inc. vs. Santa Clara County Open Space Authority (*SVTA*). This ruling is the most significant court case in further legally clarifying the substantive assessment requirements of Proposition 218. Several of the most important elements of the ruling included further emphasis that:

- Benefit assessments are for special benefits to property, not general benefits.
- The services and/or improvements funded by assessments must be clearly defined.
- Assessment districts must be drawn to contain all parcels that receive a special benefit from a proposed public improvement.
- Assessments paid in the assessment district must be proportional to the special benefit received by each such parcel from the improvements and services funded by the assessment.

This Engineer's Report and the process used to establish these proposed assessments for fiscal year 2012/2013 are consistent with the *SVTA* decision and with the requirements of Article XIIIC and XIIID of the California Constitution based on the following factors:

1. The Assessment District is narrowly drawn to include only the properties that receive special benefit from the specific Improvements and Services. Thus, zones of benefit are not required and the assessment revenue derived from real property in each Assessment District is extended only on the Services in the Assessment District.

2. The Improvements which are constructed and/or maintained with assessment proceeds in the Assessment District are located in close proximity to the real property subject to the assessment. The Improvements and Services provide illumination to streets and sidewalks

enabling improved access to the owners, residents, and guests of such assessed property. The proximity of the Improvements to the assessed parcels and the improved access and increased safety provided to of the residents of the assessed parcels by the Improvements provides a special benefit to the parcels being assessed pursuant to the factors outlined by the Supreme Court in that decision.

3. Due to their proximity to the assessed parcels, the Improvements and Services financed with assessment revenues in the Assessment District benefit the properties in the Assessment District in a manner different in kind from the benefit that other parcels of real property in the City derive from such Improvements and Services, and the benefits conferred on such property in the Assessment District are more extensive than a general increase in property values.

4. The assessments paid in the Assessment District are proportional to the special benefit that each parcel within that Assessment District receives from the Services because:

    a. The specific lighting Improvements and maintenance Services and utility costs thereof in the Assessment District and the costs thereof are specified in this Report; and

    b. The cost of the Services in the Assessment District is allocated among different types of property located within the Assessment District, and equally among those properties which have similar characteristics, such as single-family residential parcels, multi-family residential parcels, commercial parcels, or industrial parcels.

DAHMS V. DOWNTOWN POMONA PROPERTY

On June 8, 2009, the 4th Court of Appeal amended its original opinion upholding a benefit assessment for property in the downtown area of the City of Pomona. On July 22, 2009, the California Supreme Court denied review. On this date, Dahms became good law and binding precedent for assessments. In Dahms the Court upheld an assessment that was 100% special benefit (i.e. 0% general benefit) on the rationale that the services and improvements funded by the assessments were directly provided to property in the assessment district. The Court also upheld discounts and exemptions from the assessment for certain properties.

BONANDER V. TOWN OF TIBURON

On December 31, 2009, the 1st District Court of Appeal overturned a benefit assessment approved by property owners to pay for placing overhead utility lines underground in an area of the Town of Tiburon. The Court invalidated the assessments on the grounds that the assessments had been apportioned to assessed property based in part on relative costs within sub-areas of the assessment district instead of proportional special benefits.

BEUTZ V. COUNTY OF RIVERSIDE

On May 26, 2010 the 4th District Court of Appeal issued a decision on the Steven Beutz v. County of Riverside ("Beutz") appeal. This decision overturned an assessment for park maintenance in Wildomar, California, primarily because the general benefits associated with improvements and services were not explicitly calculated, quantified and separated from the special benefits.

COMPLIANCE WITH CURRENT LAW

This Engineer's Report is consistent with the requirements of Article XIIIC and XIIID of the California Constitution and with the *SVTA* decision because the Improvements to be funded are clearly defined; the Improvements are directly available to and will directly benefit property in the Assessment District; and the Improvements and Services provide a direct advantage to property in the Assessment District that would not be received in absence of the Assessments.

This Engineer's Report is consistent with Beutz and Dahms because the Improvements and Services will directly benefit property in the Assessment District and the general benefits have been explicitly calculated and quantified and excluded from the Assessments. The Engineer's Report is consistent with Bonander because the Assessments have been apportioned based on the overall cost of the Improvements and Services and proportional special benefit to each property.

PLANS & SPECIFICATIONS

The work and improvements proposed to be undertaken by the City of Clayton and the Diablo Estates at Clayton Benefit Assessment District (the "Assessment District"), and the costs thereof paid from the levy of the annual assessments, provide special benefit to Assessor Parcels within the Assessment District as defined in the Method of Assessment herein. Consistent with the Landscaping and Lighting Act of 1972 and the Benefit Assessment Act of 1982 (the "Acts"), the work, services and improvements are generally described as follows:

Maintenance and servicing of public improvements, including but not limited to, storm drain system, landscaping and lighting and all necessary appurtenances, and labor, materials, supplies, utilities and equipment, and incidental costs as applicable, for property within the Assessment District that is owned or maintained by the City of Clayton (the "Improvements"). Any plans and specifications for these improvements will be filed with the City Engineer of the City of Clayton and are incorporated herein by reference. More specifically the improvements and associated plans are the storm drain system in the Improvement Plans, Diablo Pointe by David Evans and Associates Inc., the lighting in the Joint Trench Composite Plan, Diablo Pointe by Lighthouse Design Inc., and the shared landscaping, fencing, irrigation and entry monument in the Diablo Estates at Clayton Landscape Improvements plan by Thomas Bank and Associates LLP.

As applied herein, "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation and servicing of any improvement, including repair, removal or replacement of all or any part of any improvement; providing for the life, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury; the removal of trimmings, rubbish, debris, and other solid waste; the cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti; the cleaning and replacement of storm drain pipes, drop inlets, catch basins and manholes.

"Servicing" means the cost of maintaining any facility used to provide any service, the furnishing of electric current, or energy, gas or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements; or water for the irrigation of any landscaping, or the maintenance of any other improvements.

The figure shown below displays the improvements, maintenance, replacement costs and services to be provided with the Diablo Estates at Clayton Benefit Assessment District.

FIGURE 1 – SUMMARY OF ESTIMATED ANNUAL COSTS FOR DIABLO ESTATES AT CLAYTON

CITY OF CLAYTON
Diablo Estates at Clayton Benefit Assessment District
Summary of Estimated Annual Cost
Fiscal Year 2012-13

Installation, Maintenance & Servicing Costs		
Common Landscaping	$19,426.99	
Weed Abatement (On-lot)	$11,910.00	
Storm Drain System	$27,966.00	
Street Lighting	$1,460.00	
Subtotal - Installation, Maintenance and Servicing		$60,762.99
Incidental Expenses and Administration Costs		$11,900.00
Totals for Installation, Maintenance, Servicing and Incidentals		$72,662.99
Net Cost of Maintenance, Servicing and Incidentals (Net Amount to be Assessed)		$72,662.99
Budget Allocation to Property		
Total Assessment Budget		**$72,662.99**
Single Family Equivalent Benefit Units		24
Assessment per Single Family Equivalent Unit		$3,027.62

ESTIMATE OF COST AND BUDGET – FISCAL YEAR 2012-13

FIGURE 2 – COST ESTIMATE BREAKDOWN FOR DIABLO ESTATES AT CLAYTON

CITY OF CLAYTON
Diablo Estates at Clayton Benefit Assessment District
Estimate of Maintenance, Replacement, and Administrative Costs

Item	Units	Unit Cost	Service Life (years)	Annual Cost	Annual Cost per Lot
Common Landscaping					
Landscape Maintenance	24,600 SF	$0.30		$7,380.00	
Landscape Replacement	24,600 SF	$0.05		$1,230.00	
Tree Maintenance	33 EA	$95.00		$3,135.00	
Tree Replacement - Materials	33 EA	$285.00	40	$235.13	
Water Usage	1,476 100CF	$2.86		$4,221.36	
Meter Charges	12 Mo	$51.00		$612.00	
Irrigation Maintenance & Repair	24,600 SF	$0.03		$738.00	
Frence Maintenance & Repair	1,870 LF	$0.65		$1,215.50	
Entry Monument Maintenance	1 EA	$500.00		$500.00	
Entry Monument Repair	1 LF	$4,000.00	25	$160.00	
				$19,426.99	$809.46
Weed Abatement (On-lot)					
Weed Abatement	397,000 SF	$0.03		$11,910.00	
				$11,910.00	$496.25
Storm Drain System					
Ditch - debris removal & maint	1 LS	$1,000.00		$1,000.00	
Ditch Repair	2,038 LF	$50.00	25	$4,076.00	
Vortsentry Maintenance	1 LS	$1,500.00		$1,500.00	
Vortsentry Replacement	1 LS	$100,000.00	100	$1,000.00	
Bio-Retention Basin Maintenance*	48 EA	$ -		$0.00	
Bio-Retention Basin Replacement	48 EA	$2,000.00	10	$9,600.00	
Stormwater Reporting Fee	1 LS	$5,000.00		$5,000.00	
Annual City Report Fee	1 LS	$2,000.00		$2,000.00	
Catch Basin/Manhole Cleaning	15 EA	$200.00		$3,000.00	
CB/MH/pipe repair	1 LS	$79,000.00	100	$790.00	
				$27,966.00	$1,165.25
Street Lighting					
Maintenance and Repair	1 LS	$500.00		$500.00	
Electricity	4 EA	$240.00		$960.00	
				$1,460.00	$60.83
Annual Administration					
Property Manager	12 Mo	$600.00		$7,200.00	
Annual City Engineer Services	1 LS	$2,500.00		$2,500.00	
Legal Notice/Mailing	1 LS	$100.00		$100.00	
County Collection	1 LS	$100.00		$100.00	
General Reserve	1 LS	$2,000.00		$2,000.00	
				$11,900.00	$495.83
Total				$72,662.99	$3,027.62
Number of Lots:				24	
Cost per Lot:				$3,027.62	

* homeowner responsibility
**assumes covenant with Toll Brothers, Inc. for 5 year maintenance period
Unit costs per direction of City of Clayton City Engineer

METHOD OF APPORTIONMENT

METHOD OF APPORTIONMENT

This section of the Engineer's Report includes an explanation of the benefits to be derived from the installation, maintenance and servicing of improvements and the methodology used to apportion the total assessment to properties within the Assessment District.

The Diablo Estates at Clayton Benefit Assessment District consists of all Assessor Parcels within the boundaries as defined by the Assessment Diagram included within this Report and the Assessor Parcel Numbers listed within the included Assessment Roll. The method used for apportioning the assessments is based upon the proportional special benefits to be derived by the properties in the Diablo Estates at Clayton Benefit Assessment District over and above general benefits conferred on real property or to the public at large. The apportionment of special benefit is a two step process: the first step is to identify the types of special benefit arising from the Improvements, and the second step is to allocate the assessments to property based on the estimated relative special benefit for each type of property.

DISCUSSION OF BENEFIT

In summary, the assessments can only be levied based on the special benefit to property. This benefit is received by property over and above any general benefits. Moreover, such benefit is not based on any one property owner's use of the District's storm drain system, streets and sidewalks, corridor landscaping, lighting, or a property owner's specific demographic status. With reference to the requirements for assessments, Section 22573 of the Landscaping and Lighting Act of 1972 states:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the Improvements."*

The Benefit Assessment Act of 1982 states in Government Code Section 54711:

> *"The amount of the assessment imposed on any parcel of property shall be related to the benefit to the parcel which will be derived from the provision of service"*

Proposition 218, as codified in Article XIIID of the California Constitution, has confirmed that assessments must be based on the special benefit to property:

> *"No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."*

The following benefit categories summarize the types of special benefit to residential, commercial, industrial and other lots and parcels resulting from the installation, maintenance and servicing of the Improvements to be provided with the assessment proceeds. These categories of special benefit are derived in part from the statutes passed by the California Legislature and other studies which describe the types of special benefit received by property from the installation, maintenance and servicing of improvements such as those proposed by the City of Clayton and the Diablo Estates at Clayton Benefit Assessment District. These types of special benefit are summarized as follows:

- Creation of individual lots for residential use that, in absence of the services and improvements to be funded by the assessments, would not be created.
- Improved utility and usability of property
- Improved safety and security lighting for property
- Enhanced visual experience, and desirability of the area.
- Protection of views, scenery and other resources values and environmental benefits enjoyed by residents and guests and preservation of public assets maintained by the City
- Moderation of temperatures, dust control, and other environmental benefits.

These benefit factors, when applied to property in the Assessment District, specifically increase the utility of the property within the Assessment District. For example, the assessments will provide funding to maintain lighting that improves safety and access to the property after dark and landscaping that provides visual and environmental benefits to the properties within the Assessment District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability and safety of the properties. Moreover, funding for the maintenance and servicing of such public facilities is a condition of development of Diablo Estates at Clayton that is needed to mitigate the negative impacts of this development on the City. Without the Assessment District, this condition of development would not be satisfied, which could affect the approval of new homes on the property. This is another special benefit to the properties in the Assessment District.

GENERAL VERSUS SPECIAL BENEFIT

The proceeds from the Diablo Estates at Clayton Benefit Assessment District would be used to fund improvements and increased levels of maintenance to the public facilities that serve and benefit the properties in the Assessment District. In absence of the Diablo Estates at Clayton Benefit Assessment District, such Improvements would not be properly maintained. Therefore, the Assessment District is specifically proposed to ensure that the necessary and beneficial public facilities for property in the Assessment District are properly maintained and repaired over time. The assessments will ensure that landscaping and street lighting within and adjacent to the Assessment District are functional, well maintained, clean and safe. These public resources directly benefit the property in the Assessment District and will confer distinct and special benefits to the properties within the Assessment District.

In absence of the assessments, a condition of development would not be met and future home construction in the Assessment District could be denied. The creation of residential lots and the approval for the construction of homes in Diablo Estates at Clayton is the overriding clear and distinct special benefit conferred on exclusively on property in the Assessment District and not enjoyed by other properties outside the Assessment District. Moreover, benefits to the public at large, if any, will be offset by benefits residents within the Assessment District receive from the use of other similar public facilities not funded by the Assessment District. Therefore, the assessments solely provide special benefit to property in the Assessment District (100% special benefit) over and above the general benefits conferred to the public at large or properties outside the Assessment District.

METHOD OF ASSESSMENT

This process of apportioning assessments for each property involves determining the relative benefit received by each property in relation to a single family home, or, in other words, on the basis of Single Family Equivalent dwelling units (SFE). This SFE methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments. For the purposes of this Engineer's Report, all properties are designated an SFE value, which is each property's relative benefit in relation to a single family home on one parcel. In this case, the "benchmark" property is the single family detached dwelling which is one Single Family Equivalent unit or one SFE.

ASSESSMENT APPORTIONMENT

The proposed assessments for the Diablo Estates at Clayton Benefit Assessment District would provide direct and special benefit to properties in the Assessment District. Diablo Estates at Clayton is a residential single family development project consisting of a total of 24 single family homes, each on a separate parcel. As such, each residential property receives similar benefit from the proposed Improvements. Therefore, the Engineer has determined that the appropriate method of apportionment of the benefits derived by all parcels is on a dwelling unit or single family residence basis. All improved properties or properties proposed for development are assigned an SFE factor equal to the number of dwelling units developed or planned for the property. In other words, developed parcels and vacant parcels with proposed development will be assessed 1 SFE. The assessments are listed on the Assessment Roll in Appendix A.

APPEALS AND INTERPRETATION

Any property owner who feels that the assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the City of Clayton City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City of Clayton City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City of Clayton City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City of Clayton City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City of Clayton City Engineer or her or his designee may refer their appeal to the City Council of the City of Clayton and the decision of the City Council of the City of Clayton shall be final.

CERTIFICATES

DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT

1. The undersigned respectfully submits the enclosed Engineer's Report and does hereby certify that this Engineer's Report, and the Assessment and Assessment Diagram herein, have been prepared by me in accordance with the order of the City Council of the City of Clayton.

Engineer of Work, License No. C052091

2. I, the City Clerk, City of Clayton, County of Contra Costa, California, hereby certify that the enclosed Engineer's Report, together with the Assessment and Assessment Diagram thereto attached, was filed and recorded with me on March 14, 2012.

City Clerk

3. I, the City Clerk, City of Clayton, County of Contra Costa, California, hereby certify that the Assessment in this Engineer's Report was approved and confirmed by the City Council on __________, 2012, by Resolution No. __________.

City Clerk

4. I, the City Clerk of the City of Clayton, County of Contra Costa, California, hereby certify that a copy of the Assessment and Assessment Diagram was filed in the office of the County Auditor of the County of Contra Costa, California, on __________, 2012.

City Clerk

5. I, the County Auditor of the County of Contra Costa, California, hereby certify that a copy of the Assessment Roll and Assessment Diagram for fiscal year 2012-13 was filed with me on __________, 2012.

County Auditor, County of Contra Costa

And I do hereby assess and apportion said net amount of the cost and expenses of said Improvements, including the costs and expenses incident thereto, upon the parcels and lots of land within said Diablo Estates at Clayton Benefit Assessment District in accordance with the special benefits to be received by each parcel or lot from the Improvements, and more particularly set forth in the Cost Estimate and Method of Assessment hereto attached and by reference made a part hereof.

The assessments are made upon the parcels or lots of land within the Diablo Estates at Clayton Benefit Assessment District in proportion to the special benefits to be received by the parcels or lots of land, from said Improvements.

The assessments are subject to an annual adjustment tied to the Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Bay Area as of April of each succeeding year, with the maximum annual adjustment not to exceed 4%. In the event that the annual change in the CPI exceeds 4%, any percentage change in excess of 4% can be cumulatively reserved and can be added to the annual change in the CPI for years in which the CPI change is less than 4%.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Contra Costa for the fiscal year 2012-13. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of said County.

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Rolls, the amount of the assessment for the fiscal year 2012-13 for each parcel or lot of land within the said Diablo Estates at Clayton Benefit Assessment District.

Dated: March 6, 2012

Engineer of Work

By ______________________

John W. Bliss, License No. C052091

REGISTERED PROFESSIONAL ENGINEER
JOHN W. BLISS
No. C052091
Exp: 12-31-12
CIVIL
STATE OF CALIFORNIA

ASSESSMENT

WHEREAS, the undersigned Engineer of Work has prepared and filed a report presenting an estimate of costs, a diagram for the assessment districts and an assessment of the estimated costs of the Improvements upon all assessable parcels within the assessment district;

NOW, THEREFORE, the undersigned, by virtue of the power vested in me under said Acts and the order of the City Council of the City of Clayton, hereby make the following assessment to cover the portion of the estimated cost of said Improvements, and the costs and expenses incidental thereto to be paid by the assessment district.

The amounts to be paid for said Improvements and the expense incidental thereto, to be paid by the Diablo Estates at Clayton Benefit Assessment District for the fiscal year 2012-13, are generally as follows:

FIGURE 3 – SUMMARY COST ESTIMATES – FISCAL YEAR 2012-13

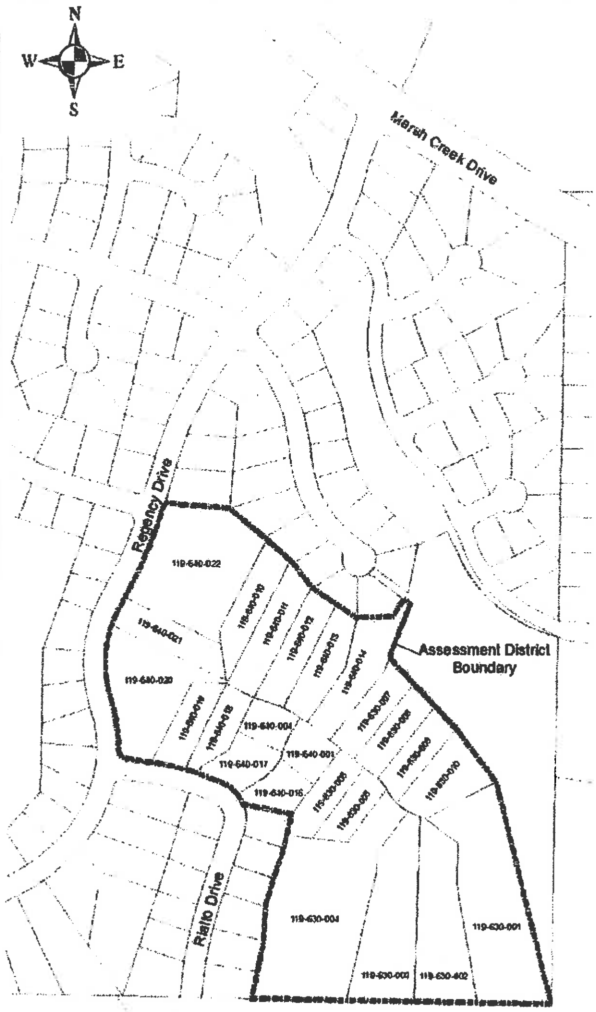
CITY OF CLAYTON
Diablo Estates at Clayton Benefit Assessment District
Summary Cost Estimate FY 2012-13

Installation, Maintenance & Servicing Costs	$60,763
Incidental Costs	$11,900
Total Budget	$72,663
Budget to Assessment	
Total Budget	$72,663
Total SFE Units	24
Rate per SFE Unit	$3,027.62

As required by the Acts, an Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of said Diablo Estates at Clayton Benefit Assessment District. The distinctive number of each parcel or lot of land in said Diablo Estates at Clayton Benefit Assessment District is its Assessor Parcel Number appearing on the Assessment Roll.

ASSESSMENT DIAGRAM

The boundaries of the Diablo Estates at Clayton Benefit Assessment District are displayed on the following Assessment Diagram.



FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF CLAYTON, COUNTY OF CONTRA COSTA, CALIFORNIA, THIS _____ DAY OF __________, 2012.

LACI JACKSON, CITY CLERK
CITY OF CLAYTON
STATE OF CALIFORNIA

RECORDED IN THE OFFICE OF THE SUPERINTENDENT OF STREETS, CITY OF CLAYTON, COUNTY OF CONTRA COSTA, CALIFORNIA, THIS _____ DAY OF ________, 2012.

RICK ANGRISANI, SUPERINTENDENT OF STREETS
CITY OF CLAYTON
STATE OF CALIFORNIA

AN ASSESSMENT WAS LEVIED BY THE CITY COUNCIL OF THE CITY OF CLAYTON ON THE LOTS, PIECES AND PARCELS OF LAND SHOWN ON THIS ASSESSMENT DIAGRAM THE ASSESSMENT WAS LEVIED ON THE ________ DAY OF ______________, 2012; THE ASSESSMENT DIAGRAM AND THE ASSESSMENT ROLL WERE RECORDED IN THE OFFICE OF THE SUPERINTENDENT OF STREETS OF THE CITY ON THE ________ DAY OF ____________, 2012. REFERENCE IS MADE TO THE RECORDED ASSESSMENT ROLL RECORDED IN THE OFFICE OF SUPERINTENDENT OF STREETS FOR THE EXACT AMOUNT OF EACH ASSESSMENT LEVIED AGAINST EACH PARCEL OF LAND SHOWN ON THIS ASSESSMENT DIAGRAM.

LACI JACKSON, CITY CLERK
CITY OF CLAYTON
STATE OF CALIFORNIA

FILED THIS ______ DAY OF ____________, 2012, AT THE HOUR OF __________ ___.M. IN BOOK ________ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICT AT PAGE ______, IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

COUNTY RECORDER,
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA

DEPUTY COUNTY RECORDER

Note:
REFERENCE IS HEREBY MADE TO THE MAPS AND DEEDS OF RECORD IN THE OFFICE OF THE ASSESSOR OF THE COUNTY OF CONTRA COSTA FOR A DETAILED DESCRIPTION OF THE LINES AND DIMENSIONS OF ANY PARCELS SHOWN HEREIN. THOSE MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF SUCH PARCELS. EACH PARCEL IS IDENTIFIED IN SAID MAPS BY ITS DISTINCTIVE ASSESSOR'S PARCEL NUMBER

SCI Consulting Group
4745 Mangels Boulevard
Fairfield, CA 94534
(707) 430-4300

Assessment Diagram
Diablo Estates at Clayton
Benefit Assessment District
Clayton, Contra Costa County, State of California

APPENDICES

APPENDIX A – ASSESSMENT ROLL, FISCAL YEAR 2012-13

An Assessment Roll (a listing of all parcels assessed within the Assessment District and the amount of the assessment) will be filed with the City Clerk and is, by reference, made part of this Report and is available for public inspection during normal office hours.

Each lot or parcel listed on the Assessment Roll is shown and illustrated on the latest County Assessor records and these records are, by reference made part of this Report. These records shall govern for all details concerning the description of the lots or parcels.

FIGURE 4 – ASSESSMENT ROLL

CITY OF CLAYTON
Diablo Estates at Clayton Assessment District
Assessment Roll

PARCEL NUMBER	OWNER	SITUS	SFE Units	ASSESSMENT
119-630-001	TOLL CA XIX L P	27 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-002	TOLL CA XIX L P	26 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-003	TOLL CA XIX L P	22 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-004	TOLL CA XIX L P	18 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-005	TOLL CA XIX L P	14 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-006	TOLL CA XIX L P	10 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-007	TOLL CA XIX L P	9 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-008	TOLL CA XIX L P	15 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-009	TOLL CA XIX L P	19 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-630-010	TOLL CA XIX L P	23 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-640-001	TOLL CA XIX L P	6 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-640-004	TOLL CA XIX L P	7 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-010	TOLL CA XIX L P	16 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-011	TOLL CA XIX L P	12 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-012	TOLL CA XIX L P	8 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-013	TOLL CA XIX L P	4 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-014	TOLL CA XIX L P	5 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-640-016	TOLL CA XIX L P	2 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-640-017	TOLL CA XIX L P	3 SEMINARY RIDGE PL CLAYTON CA 94517	1	$3,027.62
119-640-018	TOLL CA XIX L P	11 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-019	TOLL CA XIX L P	17 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-020	TOLL CA XIX L P	21 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-021	TOLL CA XIX L P	24 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
119-640-022	TOLL CA XIX L P	20 PROMONTORY PL CLAYTON CA 94517	1	$3,027.62
			24	$72,662.88

declaring

Saturday, May 23, 2015

as

"Sarah Owen Day"

WHEREAS, *the Girl Scouting movement founded by Juliette Gordon Low in 1912 enables girls to learn skills to provide duty to God and Country, service to others, and service to oneself; and*

WHEREAS, *Girl Scouting requires a commitment of time and energy to moral, civic, and physical ideals which help the individual, the community, and our Nation; and*

WHEREAS, *Girl Scouting has Leadership Journeys and levels of accomplishment, with the ultimate being the coveted and rare Girl Scout Award; and*

WHEREAS, *Sarah Owen, of Troop 31100, Diablo Shadows Service Unit, has advanced through the Scout levels from Brownie in 2003 to earning her Gold Award as an Ambassador in October 2014; and*

WHEREAS, *with integrity Sarah Owen carried out the Girl Scout Law and Girl Scout Promise; she completed many Girl Scout Interest Projects and Badges plus two Leadership Journeys, and she also earned the Silver Torch Award; and*

WHEREAS, *Sarah Owen completed over 500 hours of community service involving numerous Clayton community events on behalf of the Clayton Business and Community Association, the Diablo View Middle School and the Clayton Valley Charter High School ; and*

WHEREAS, *Sarah Owen also earned the two highest medal awards in Girl Scouting: the Silver and Gold Awards; and*

WHEREAS, *Sarah Owen completed her Gold Award project, which consisted of organizing the first Annual 5K Run and Fitness Fair in Clayton in July 2014 to raise awareness about health and fitness to families. Sarah organized over 80 volunteers and collected food bank donations of 767 pounds of food equaling 654 meals. Over 350 runners participated in the 5k Fun Run.*

NOW, THEREFORE, *I, David T. Shuey, Mayor of the City of Clayton, on behalf of the entire Clayton City Council, do herewith declare our civic pride in Sarah Owen, commend her for her accomplishments and contributions to the betterment of society and our community, and in recognition of her Girl Scout Gold Award achievement do hereby proclaim Saturday, May 23, 2015 as "Sarah Owen Day" in the City of Clayton, California.*

Agenda Date: 5-19-201

Agenda Item: 4a

Agenda Date: 5-19-2015

Agenda Item: 8a

CITY OF CLAYTON
Founded 1857 .. Incorporated 1964

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 19 MAY 2015

SUBJECT: CONTINUED CONSIDERATION OF APPROVING PACE PROGRAM OPERATIONS IN THE CLAYTON COMMUNITY

RECOMMENDATION

It is recommended the City Council consider the additional information requested concerning the prospect of the City obtaining indemnification by the California joint powers authorities pertaining to City membership to allow the consideration and operation of **P**roperty **A**ssessed **C**lean **E**nergy (PACE) programs by real property owners within the city of Clayton, and coupled with its continued review of the original PACE agenda packet provided at the City Council's 05 May 2015 regular public meeting, and following the opportunity for public comment, that Council adopt the prepared three (3) Resolutions.

BACKGROUND

The purpose of this Memorandum is to summarize how and to what extent indemnification arrangements will cover the City of Clayton as a result of the City's participation in the Figtree Program, CalFirst Program and HERO Program. As background information, each of the programs was established by California joint powers authorities and is operated by a third party administrator. In each case, the City is required to become a member of the joint powers authority in order to participate in the program. The Figtree Program was established by the California Enterprise Development Authority ("CEDA") and is administered by Figtree Company, Inc. The CalFirst Program was established by the California Statewide Communities Development Authority ("CSCDA") and is administered by Renewable Funding, LLC. The HERO Program was established by the Western Riverside Council of Governments ("WRCOG") and is administered by Renovate America, Inc.

a. FIGTREE PROGRAM

The following table shows the indemnification arrangement for the Figtree PACE Program:

Figtree Company/City	Figtree Company/CEDA	CEDA/City
Figtree will indemnify the City for all claims as a result of the negligence or malfeasance of Figtree, except where the damages are caused by the sole negligence or willful misconduct of the City.	Figtree indemnifies CEDA for negligence and malfeasance of Figtree arising from or related to the Figtree Program.	CEDA does not and has indicated that it will not indemnify its associate members.

b. CALFIRST PROGRAM
The following table shows the indemnification arrangement for the CalFirst PACE Program:

Renewable Funding/City	Renewable Funding/CSCDA	CSCDA/City
Renewable Funding will indemnify City for all claims arising out of or in connection with the CalFirst Program, except where the damages are caused by the sole negligence or willful misconduct of the City.	It is unknown whether and to what extent Renewable Funding indemnifies CSCDA.	CSCDA does not indemnify its associate members. It is unclear at this time whether CSCDA will indemnify associate members.

c. HERO PROGRAM
The following table shows the indemnification arrangement for the HERO PACE Program:

Renovate America/City	Renovate America/WRCOG	WRCOG/City
Renovate America will indemnify City for all claims arising out of or in connection with the HERO Program, except where the damages are caused by the sole negligence or willful misconduct of the City.	Renovate America will indemnify WRCOG for Renovate America's negligence, wrongful acts or omissions and willful misconduct arising out of or in connection with its administration of the HERO Program.	Indemnity pursuant to a mutual indemnification provision where WRCOG and City indemnify each other for the other party's negligence or willful misconduct in connection with the HERO program.

Attachments: 1. Email from Figtree/CEDA [1 pg.]
2. Proposed Amendment to JPA on HERO Program [7 pp.]

ATTACHMENT 1

Gary Napper

Subject: FW: Indemnification Agreement - Figtree/CEDA ?

From: Villaraigosa Aaron [mailto:avillaraigosa@figtreefinancing.com]
Sent: Wednesday, May 13, 2015 5:15 PM
To: cmullen@ci.clayton.ca.us
Cc: malathy.subramanian@bbklaw.com; Kevin Wang; gnapper@ci.clayton.ca.us
Subject: Re: Indemnification Agreement - Figtree/CEDA ?

Dear All:

Unfortunately, the JPA of CEDA does not and will not indemnify cities and counties. The JPA has no precedent of this request from any city or county throughout California with over 150 cities and counties in the PACE program.

Thank you,

Aaron

Aaron Villaraigosa
Regional Director
Government Partnerships
Direct: 858.771.0895
avillaraigosa@figtreefinancing.com

9915 Mira Mesa Blvd. Suite 130 | San Diego, CA 92131
Toll Free: 1.877.577.7373 | Subscribe to Our Newsletter

AMENDMENT TO THE JOINT POWERS AGREEMENT ADDING CITY OF CLAYTON 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 5th day of May, 2015, by City of Clayton ("City") and the Western Riverside Council of Governments ("Authority") (collectively the "Parties").

RECITALS

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

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

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

WHEREAS, Authority has established a PACE program known as the "California HERO Program" pursuant to Chapter 29 which authorizes the implementation of such PACE financing program for cities and counties 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, as it is now enacted or maybe amended hereafter, to finance Improvements to be installed on such properties; and

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

WHEREAS, pursuant to the Joint Exercise of Powers Act, the Parties are approving this JPA Agreement to allow for the provision of PACE services, through the California HERO

Program, including the operation of such PACE financing program, within the incorporated territory of City; and

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

MUTUAL UNDERSTANDINGS

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

A. **JPA Amendment.**

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

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

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

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

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

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

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

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

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

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

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

C. **Miscellaneous Provisions.**

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

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

Authority shall also defend, indemnify and hold City 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 arising directly or indirectly from any activities of the Authority that are not related to the California HERO Program , including without limitation the payment of expert witness fees and attorneys' fees and other related costs and expenses, but excluding payment of consequential damages.

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

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

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

Authority:

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

City:

City of Clayton

6000 Heritage Trail
Clayton, CA 94517
Attn: Gary A. Napper, City Manager

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

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

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

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

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

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

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

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

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

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

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: ______________________________ Date: ______________

Executive Committee Chair
Western Riverside Council of Governments

CITY OF CLAYTON

By: ______________________________ Date: ______________

Name: David T. Shuey
Title: Mayor

CITY OF CLAYTON
Founded 1857 . . Incorporated 1964

Agenda Date: 5-5-2015

Agenda Item: 8b

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR CM

DATE: MAY 5, 2015

SUBJECT: CONSIDER THE STATE OF CALIFORNIA PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS FOR THE CITY OF CLAYTON, CONSISTING OF THE CALIFORNIAFIRST, FIGTREE AND HERO PROGRAMS (CDD-01-15).

RECOMMENDATION

Staff recommends the City Council review and consider the City of Clayton's participation in the State of California **P**roperty **A**ssessed **C**lean **E**nergy (PACE) Programs, consisting of the CaliforniaFirst, Figtree and HERO Programs; if determined to be appropriate, adopt the attached enabling Resolutions and direct staff to complete any additional documents needed to authorize the three private company PACE programs for operation in the Clayton community.

BACKGROUND

Clayton 2015-2023 Housing Element

This past year the City was able to accomplish a streamlined update of our Housing Element for the eight-year 2015-2023 period. On October 14, 2014 the Planning Commission conducted a public hearing and adopted Resolution No. 04-14 recommending City Council approval of the 2015-2023 Housing Element, which was then followed by City Council public hearing review and approval on November 18, 2014 by adoption of Resolution No. 42-2014. The state's final approval/certification of the 2015-2023 Housing Element for the City of Clayton was provided in writing by HCD on December 11, 2014.

Under Chapter 8 of the 2015-2023 Housing Element, Goal V states the City shall *"Encourage and maintain energy efficiency in new and existing housing"* and Implementation Measure V.1.3 states *"The City will explore home energy and water efficiency improvement financing opportunities available through PACE programs, such as HERO or Figtree PACE. To make this financing option available to Clayton residents, the City would need to adopt a resolution opting in to a Joint Powers Authority. These programs* *are available at no cost to the City".* The timing of this implementation measure was identified to occur in 2015. After attending a PACE workshop, conducting internal staff review of three PACE Programs expressing interest in the Clayton market along with associated materials and information, and after researching how other local communities have addressed this matter, staff brings consideration of the PACE programs to the City Council.

Planning Commission Action
On April 14, 2015 the Planning Commission reviewed and considered the City of Clayton's participation in the State of California **P**roperty **A**ssessed **C**lean **E**nergy (PACE) Programs and then passed a motion (4-0-1 abstention vote) recommending approval to the City Council. One representative of the CaliforniaFirst Program attended and responded to Commission questions. No other program representatives or members of the public attended or spoke on the matter.

DISCUSSION

State Property Assessed Clean Energy (PACE) Programs
In 2008, the State of California approved Assembly Bill 811, amending the Improvement Act of 1911, allowing cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by private real property owners. Subsequent bills were passed to expand the list of eligible projects to include water efficiency improvement (AB 474 in 2009) and electric vehicle charging infrastructure (SB 1340 in 2010). Programs developed under this legislation are referred to as Property Assessed Clean Energy programs or PACE programs. PACE programs allow residential and commercial property owners located within a participating district to finance up to 100% (not to exceed 15% to 20% of their property value depending on the program) of energy efficiency, water efficiency and renewable energy projects with little or no up-front costs and pay it off over time as a voluntary property tax assessment through their existing property tax bill. The private property owner voluntarily enters into a contractual agreement with a special tax district in which one resides to access financing that is secured by a lien on one's private property and repaid as a special assessment on one's property tax bill. This means the participating property owner pays the special tax at the same time and in the same manner as other property taxes and assessments. Improvements commonly implemented through PACE include solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. One of the programs (CaliforniaFirst) also allows financing of seismic improvements through its PACE program.

PACE program financing is merely one option for private property owners to finance energy efficiency and water conservation improvements on one's property. PACE program financing is an alternative to other private financing mechanisms, such as using cash, a home equity line of credit or a credit card, to finance these improvements. PACE financing is unique in that qualifying for PACE financing is based primarily on a property owner's equity and timeliness of property tax and mortgage payments rather than individual credit rating or debt-to-income ratio. All PACE financing debt is linked to the physical property rather than to the property owner. The financed debt does not appear on a property owner's individual credit report. PACE programs offer fixed long-term interest rates, the term of which is generally equal to the useful life of the improvement (from 5 to 25 years), which may be longer than the normal term of other competing loans. As such, PACE program financing may offer advantages over other forms of financing to some borrowers.

In order for private property owners in a jurisdiction to access PACE financing, the jurisdiction must create or join an existing special tax district and specifically authorize contracts between the special tax district and property owners for PACE financing. Since AB 811 passed in 2008, over 320 California cities and counties have joined or created such special tax districts and authorized property owners' participation in PACE programs. PACE financing requires a source of capital from which property owners can borrow and repay through corresponding special assessments. Therefore, the vast majority of cities and counties have joined existing special tax districts, which have partnered with private organizations to administer PACE programs in their jurisdictions. Only a small number of jurisdictions, including Sonoma County, the City of Sacramento, and Los Angeles County, have used their own internal funds to capitalize and support PACE funding.

The three leading PACE programs operating in Northern California are CaliforniaFirst, Figtree, and HERO, and all three have requested the City of Clayton to allow property owners to voluntarily participate in their PACE programs. Many jurisdictions have authorized all three of these organizations to work in their area to offer competition and program alternatives to interested property owners. The following cities in Contra Costa County have allowed participation in PACE programs offered by CaliforniaFirst, Figtree, and HERO, as marked with an "X".

City	CaliforniaFirst	Figtree	HERO
Antioch	X	X	X
Brentwood	X		X
Concord		X	X
Lafayette	X	X	X
Martinez	X		X
Oakley	X	X	X
Pittsburg	X	X	
Pleasant Hill	X	X	X
Richmond	X	X	X
San Pablo	X	X	X
San Ramon	X	X	X
Walnut Creek	X	X	X

During staff's research of the PACE programs we solicited feedback from other communities about the PACE programs, and received no negative feedback. Most communities consider the PACE programs to be a positive alternative and option for homeowners to finance energy efficiency and water conservation improvements. However, it is acknowledged that as with many private financing programs the consumer must do one's own research and make an informed decision on their own. The phrase "informed consumer" applies here.

The following is a summary discussion of the three PACE programs being considered at this time by the City of Clayton:

A. <u>CaliforniaFirst Program</u>

The CaliforniaFirst Program was created and approved by the California Statewide Communities Development Authority (CSCDA) and its participating local government members to assist private property owners who want to improve the energy and/or water usage of one's home while lowering utility bills and greenhouse gas emissions. The City of Clayton is already a member of CSCDA. Renewable Funding LLC administers the CaliforniaFirst Program and manages the Program's call center and daily activities of the program. CSCDA, through the program, provides the financing for <u>residential</u> property owners.

Through CSCCA and this program, property owners may finance the installation of eligible products and repay the financing through an assessment on the corresponding property tax bill. Residential property owners apply to finance energy efficiency and water conservation improvements, including but not limited to solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. CaliforniaFirst also allows financing of seismic improvements. Participation in the program is voluntary and requires the full consent of all owners on the property title. Property owners sign an assessment agreement and agree to repay the amount financed over a period of 5, 10, 15, 20 or 25 years, depending on the type of property, the financing amount, and the expected useful lifetime of the installed eligible products. An assessment lien is recorded on a property to secure the financing. Interest rates are subject to underwriting standards and competitive pricing based on market conditions, and currently range from 6.75% - 8.39% based on the term of the financing (5 - 25 years). The assessment lien is senior to liens for mortgages and other non-governmental liens on the property. The minimum assessment amount is $5,000 with a maximum $200,000 (but must be less than 15% of the value of the property). The assessment amount plus the mortgage-related debt must not exceed 100% of the value of a property (for more details, please see attached information provided by the CaliforniaFirst Program).

B. <u>Figtree Program</u>

The Figtree Program operates under the California Enterprise Development Authority (CEDA). CEDA is a Joint Powers Authority (JPA) that administers its program through a partnership with Figtree Financing. The City of Clayton must join CEDA as an associate member. The Figtree private financing program allows <u>commercial</u> property owners to voluntarily place assessment liens on their property for the purpose of installing renewable energy, energy efficiency, and water conservation improvements. Figtree representatives have stated they intend to expand their program in April 2015 to also include residential property owners. The Figtree interest rates are market-based and determined at the time of financing, but have been in the 4.50% to 7.50% range. The minimum amount financed is $5,000 with a maximum not to exceed 10% of the total property value (up to 20% in some circumstances). The assessment liens are available in 5, 10, 15 and 20 year terms, not to exceed the useful life of the improvements. The Figtree Program includes processing, administration and prepayment fees. Figtree assessment liens are land-secured and require no personal guarantee. Figtree states it is a full service, free market and flexible program offering financing plans that can be tailored to a property owner's specific need.

C. <u>HERO Program</u>

The Home Energy Renovation Opportunity (HERO) Program operates under the joint powers authority of the Western Riverside Council of Governments (WRCOG). The City of Clayton must join WRCOG as an associate member to facilitate private property owner access to this PACE Program. The HERO Program is offered to property owners in participating cities and counties to finance renewable energy, energy and water efficiency improvements, and electric vehicle charging infrastructure on their property. If a property owner chooses to participate, the installed improvements will be financed by the issuance of bonds by the WRCOG. The bonds are secured by a voluntary contractual assessment levied on participating owner's property. Participation in the program is 100% voluntary. Property owners who wish to participate in the program agree to repay the amount borrowed through the voluntary contractual assessment collected together with one's local property tax payments. This financing is available for eligible improvements on both residential and non-residential properties.

<u>OTHER DISCUSSION POINTS</u>

A. <u>Federal Housing Finance Administration</u>

On July 26, 2010, the Federal Housing Finance Administration (FHFA) issued its statement entitled, "FHFA Statement on Certain Energy Retrofit Loan Programs" (FHFA Statement) which provided in part that:

> ...In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:
>
> - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
> - Ensuring that loan covenants require approval/consent for any PACE loan;
> - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
> - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance..."

As a result of the FHFA's Statement, the PACE programs stopped accepting applications for the Program from residential properties and stopped providing financing through the program to residential property owners in the participating communities.

To address this issue, in March 2014, the Governor of the State of California created a PACE Loss Reserve Program. The PACE Loss Reserve Program, authorized by Senate Bill 96 (2013), is designed to address FHFA's financial concerns by making first mortgage lenders whole for any losses in a foreclosure or a forced sale that are attributable to a PACE loan. If a mortgage lender forecloses on a home that has a PACE lien, the reserve can be used to cover PACE payments during the foreclosure period. Alternatively, if a local government sells a home for unpaid taxes and the sale price falls short of the outstanding tax and first mortgage amounts, the reserve can be used to cover the shortfall (up to the amount of outstanding PACE payments). By covering these types of losses, the Program puts the first mortgage lender in the same position it would be in without a PACE lien.

The $10 million Loss Reserve is available for all PACE loans issued by enrolled PACE programs and reported to California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) for the length of their terms. PACE programs must report to CAEATFA semi-annually and pay a small administrative fee based on the principal amount of new loans they issue.

Coinciding with strong demand statewide by residential property owners to finance the installation of energy efficient and water conserving improvements, the PACE programs have regained traction and interest. However, there can be no assurance the FHFA will not act to reemphasize, or take other similar action to issuing, the FHFA Statement in the future. Property owners with assessment liens must also understand potential risk implications for a refinancing or sale of the property and must assume the associated risk.

B. <u>Contra Costa County Association of Realtors</u>
In January 2015, staff was informed by a representative of the Contra Costa Association of Realtors (CCAR) that its Board of Directors was opposed to the PACE programs, but they declined to put that position in writing. Staff recently reached out to CCAR to determine if it still opposed PACE programs; we were informed that CCAR has since altered its stance on PACE programs and it now takes “no position”.

C. <u>Indemnification Agreements</u>
To protect the financial and liability interests of the City of Clayton for these private property owner programs, staff recommends the City require Indemnification Agreements with each of the three PACE program administrators: Renewable Funding, LLC for CaliforniaFirst; Figtree Company Inc. for Figtree; and Renovate America, Inc. for HERO. A template PACE Program Indemnification Agreement will be used that has been reviewed and approved by the City Attorney (attached to each Resolution).

D. <u>Potential benefits to property owners include:</u>

- <u>Eligibility</u>: In today's economic environment, alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements or electric vehicle charging infrastructure may not be available. Some property owners do not have financing options available that would provide funding for desired improvements that could lower one's utility bills.
- <u>Savings</u>: Energy and water rates continue to rise and investing in and installing energy efficient, water efficient and renewable energy improvements help to reduce utility bills.
- <u>100% voluntary</u>. Property owners can choose to participate in a PACE Program solely at one's discretion. Improvements and properties must meet eligibility criteria in order to qualify for financing.
- <u>Payment obligation stays with the property</u>. The voluntary contractual assessment stays [runs] with the property upon transfer of ownership. Certain residential

conforming home mortgage lenders may, however, require the assessment be paid off at the time the property is refinanced or sold.

- Prepayment option. The property owner can choose to pay off contractual assessments at any time, subject to any applicable prepayment penalties.
- Customer oriented program. Part of the success of the PACE programs is their customer service. Committed funding partners provide funds promptly upon project completion resulting in both property owner and contactor satisfaction.

E. Potential benefits to the City include:

- An increase in local and regional jobs.
- An increase in property values (energy efficient homes and buildings generally carry more value).
- An increase in sales, payroll and property tax revenues.
- As in conventional assessment financing, the City neither assumes nor incurs any obligation nor liability to repay the special tax district bonds nor to pay any delinquent assessments levied on the participating real properties. The City is not the underwriter or the guarantor of a PACE program or accompanying private property loan.
- All PACE program and assessment administration, bond issuance and bond administration functions are handled by the three program administrators, namely CaliforniaFirst, Figtree and HERO. After implementation of the PACE programs, City staff time should be minimal and limited to referrals to the PACE program administrators.
- By joining and using these existing and already established PACE programs, the City simply refers inquiring property owners to these financing programs, rather than undertake time and costly expense of trying to establishment its own PACE program.
- The City will have completed Implementation Measure V.1.3 of its 2015-2023 Housing Element.

CITY ROLE

Other than approving participation Resolutions permitting designated PACE Programs to conduct business and operate within our municipal jurisdiction (along with the appropriate City Business License), the City assumes no role or responsibility in or of the PACE Programs. Each PACE Program is entirely independent of the City and the City is not the party for questions or concerns of prospective participants. The Indemnification Agreement signed by each PACE Program administrators will ensure the separation of any risk or program liability.

FISCAL IMPACT

Some initial staff time as well as printing costs have and will be associated with the preparation of this report and program implementation. Long term fiscal impacts should be negligible as the programs are independently operated by each program provider and minimal City staff time will be required.

Attachments:

1. Resolution - Approving Participation in CaliforniaFirst PACE Program w/
   Exhibit A – Indemnification Agreement with Renewable Funding, LLC
2. Resolution – Approving Associate Membership in CEDA(Figtree) w/
   Exhibit A – Associate Membership Agreement w/ CEDA
3. Resolution – Approving Participation in Figtree PACE Program w/
   Exhibit A – CEDA Resolution of Intention
   Exhibit B – Indemnification Agreement with Figtree Company, Inc.
4. Resolution – Approving Participation in the HERO PACE Program w/
   Exhibit A – JPA Amendment Agreement Relating to WRCOG
   Exhibit B – Indemnification Agreement with Renovate America, Inc.
5. April 14, 2015 Planning Commission Report w/ Attachments

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RESOLUTION NO. ___-2015

A RESOLUTION AUTHORIZING THE CITY OF CLAYTON TO PARTICIPATE IN THE CALIFORNIAFIRST PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE INCORPORATED TERRITORY OF THE CITY OF CLAYTON; AND AUTHORIZING RELATED ACTIONS

THE CITY COUNCIL
City of Clayton, California

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

WHEREAS, California Communities has established the CaliforniaFIRST program (the "CaliforniaFIRST Program") and will provide financing for certain improvements authorized by Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), including, but not limited to, renewable energy, energy efficiency and water efficiency improvements and seismic strengthening 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 (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that real property 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 real property ("Participating Property Owners") within the incorporated territory of the City to participate in the CaliforniaFIRST Program and to allow California Communities to conduct assessment proceedings under Chapter 29 within the incorporated territory of the City and to issue Bonds under the 1915 Act to finance the Improvements; and

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

WHEREAS, the City shall not be responsible or liable for the conduct of any assessment proceedings, 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 CaliforniaFIRST Program;

ATTACHMENT - 1

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Clayton, California as follows:

Section 1. This City Council hereby finds and declares that real properties in the City's incorporated area will benefit from the availability of the CaliforniaFIRST Program within the incorporated territory of the City and, pursuant thereto, the conduct of special assessment proceedings by California Communities pursuant to Chapter 29 and the issuance of Bonds under the 1915 Act.

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

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

(2) The City shall not be responsible or liable for the conduct of any assessment proceedings, 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 CaliforniaFIRST Program; and

(3) The issuance of Bonds will occur following receipt of a final judgment in a validation action filed by California Communities pursuant to Code of Civil Procedure Section 860 that the Bonds are legal obligations of California Communities.

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

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to make applications for the CaliforniaFIRST program available to all real property owners who wish to finance Improvements; provided, that California Communities shall be responsible for providing to the City such applications and related materials at its own expense. The following staff person, together with any other staff person chosen by the City Manager from time to time, is hereby designated as the contact persons for California Communities in connection with the CaliforniaFIRST Program: Community Development Director.

Section 5. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by California Communities in accordance with the Program Report to implement the CaliforniaFIRST Program for Participating Property Owners.

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

Section 7. This Resolution shall take effect once it is adopted and a fully executed indemnification agreement and insurance documentation has been provided to the City. The City Manager is authorized to execute the Indemnification Agreement (Exhibit A). The City Clerk is hereby authorized and directed to transmit a certified copy of this Resolution to the Secretary of California Communities.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 5th day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

____

David T. Shuey, Mayor

ATTEST

____

Janet Brown, City Clerk

I hereby certify that the foregoing Resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 5, 2015.

____

Janet Brown, City Clerk

Attachment:
Exhibit A – Indemnification and Insurance Agreement

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INDEMNIFICATION AND INSURANCE AGREEMENT
BY AND BETWEEN
CITY OF CLAYTON
AND
RENEWABLE FUNDING, LLC

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the City of Clayton a municipal corporation ("City") and Renewable Funding, LLC, a California limited liability company (the "Administrator"), the administrator of the CaliforniaFIRST Program, which is a program of the California Statewide Communities Development Authority, a California joint exercise of powers authority (the "Authority").

RECITALS

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

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

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

WHEREAS, on May 5, 2015, the City Council of the City of Clayton, California adopted a Resolution authorizing the City to join the CaliforniaFIRST Program, and authorizing the Authority to accept applications from eligible real property owners and to conduct assessment proceedings and levy assessments within the territory of the City and authorizing related actions; and

EXHIBIT - A

WHEREAS, the Authority is solely responsible for the formation, operation and administration of the CaliforniaFIRST Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the CaliforniaFIRST Program; and

WHEREAS, the Administrator is the administrator of the CaliforniaFIRST Program and agrees to indemnify the City and provide insurance and add the City as an additional insured on its insurance policy or policies in connection with the operations of the CaliforniaFIRST PACE Program as set forth herein; and

NOW, THERFORE, in consideration of the above premises and of the City's agreement to join the CaliforniaFIRST Program, the parties agree as follows:

1. <u>Agreement to Indemnify.</u> The Administrator agrees to defend, indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the CaliforniaFIRST Program except such loss or damage which was caused by the sole negligence or willful misconduct of the City. The Administrator will conduct all defenses at its sole cost and expense and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

2. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the operation of the CaliforniaFIRST Program, to maintain the insurance coverage set forth in Exhibit A to this Agreement.

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

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

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

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

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

If to the Administrator:	Renewable Funding, LLC 500 12th Street, #300 Oakland, CA 94607 Attn: _______________
If to the City:	City of Clayton 6000 Heritage Trail Clayton, CA 94517 Attn: City Manager

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

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

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

"City"

APPROVED AS TO FORM:

City of Clayton, a municipal corporation

____
Name: Mala Subramanian, City Attorney

By______________________________
Name: Gary A Napper, City Manager

Date:______________________________

"Administrator"

Renewable Funding, LLC

By______________________________
Name:
Title:

Date: ______________________________

EXHIBIT A

INSURANCE

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and

2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City Manager.

B. Minimum Limits of Insurance

Administrator shall maintain limits no less than:

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

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of $1,000,000 per accident; and

4. Professional Liability Errors & Omissions $1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Administrator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. City of Clayton, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Administrator; products and completed operations of Administrator; premises owned, leased or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

b. Administrator's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Administrator's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided City, its officers, employees, agents, or contractors.

d. Coverage shall state that Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of Clayton, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to City Manager.

F. Verification of Coverage

Administrator shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: cityclerk@ci.clayton.ca.us, or mailed to the following postal address or any subsequent address as may be directed in writing by the City Manager:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517
Attn: City Clerk

G. Subcontractors

Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

RESOLUTION NO. ___-2015

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

THE CITY COUNCIL
City of Clayton, California

WHEREAS, the City of Clayton, California (the "City"), 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 (Exhibit A); and

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

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Clayton, California as follows:

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

Section 2. The Associate Membership Agreement presented to this meeting and on file with the City Clerk is hereby approved. The Mayor of the City, the City Manager, the City Clerk and other officials of the City are each hereby authorized and directed, for and on behalf of the

ATTACHMENT - 2

City, to execute and deliver the Associate Membership Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

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

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

Section 5. This Resolution shall take effect once it is adopted and a fully executed indemnification agreement and insurance documentation has been provided to the City. The City Manager is authorized to execute the Indemnification Agreement. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 5th day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

____
David T. Shuey, Mayor

ATTEST

____
Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 5, 2015.

Janet Brown, City Clerk

Attachments:
Exhibit - A – Associate Membership Agreement with the Authority

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ASSOCIATE MEMBERSHIP AGREEMENT

by and between the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and the

CITY OF CLAYTON, CALIFORNIA

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this "Associate Membership Agreement"), dated as of May 5, 2015 by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Authority") and the CITY OF CLAYTON, 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.

EXHIBIT - A

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 CLAYTON, CALIFORNIA

By: ______________________________
David T. Shuey, Mayor
City Council

Attest:

____
Janet Brown, City Clerk

RESOLUTION NO. ___-2015

RESOLUTION AUTHORIZING THE CITY OF CLAYTON TO PARTICIPATE IN 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 CLAYTON; AND AUTHORIZING RELATED ACTIONS

THE CITY COUNCIL
City of Clayton, California

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

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

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

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

ATTACHMENT - 3

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

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

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

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Clayton, California as follows:

Section 1. Good Standing. The City is either a municipal corporation or other public body and a member of CEDA in good standing.

Section 2. Public Benefits. On the date hereof, the City Council hereby finds and determines that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

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

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

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

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

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

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

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

Section 7. Indemnification. The City Council acknowledges that Figtree will provided the City with an indemnification agreement (Exhibit B), for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The City Council hereby authorizes the appropriate officials and staff of the City to execute and deliver the Indemnification Agreement to Figtree.

Section 8. City Contact Designation. The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements. The following staff person, together with any other staff person designated by the City Manager from time to time, is hereby designated as the contact persons for CEDA in connection with Figtree PACE: Community Development Director.

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

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

Section 11. Effective Date. This Resolution shall take effect once it is adopted and a fully executed indemnification agreement and insurance documentation has been provided to the City. The City Manager is authorized to execute the Indemnification Agreement. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Figtree Energy Financing.

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

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 5th day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

____

David T. Shuey, Mayor

ATTEST

____

Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 5, 2015.

____

Janet Brown, City Clerk

Attachments:
Exhibit - A – CEDA Resolution of Intention
Exhibit - B – Indemnification Agreement with Figtree

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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 CLAYTON

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 Clayton (the "City") located in the County of Contra Costa (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.

EXHIBIT - A

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

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

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

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

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

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

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

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

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed Figtree PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings. The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

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

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

a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.

b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner within the City.

c) A statement of CEDA's policies concerning contractual assessments including all of the following:

(1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.
(2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
(3) A maximum aggregate dollar amount of contractual assessments.
(4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.

d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.

e) A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the County, and a plan for financing the payment of those fees.

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

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

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

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

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

PASSED AND ADOPTED this _____ day of ______, 2015.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By:______________________________
Gurbax Sahota, Chair

ATTEST:

____
Larry Cope, Secretary

INDEMNIFICATION AND INSURANCE AGREEMENT
BY AND BETWEEN
CITY OF CLAYTON
AND
FIGTREE COMPANY, INC.

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the City of Clayton a municipal corporation ("City") and Figtree Company, Inc., a California corporation (the "Administrator"), the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program, which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (the "Authority").

RECITALS

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

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

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

WHEREAS, on May 5, 2015, the City Council of the City of Clayton, California adopted a resolution authorizing the City to join the Figtree PACE Program, and authorizing the Authority to accept applications from eligible real property owners and to

EXHIBIT - B

conduct assessment proceedings and levy assessments within the territory of the City and authorizing related actions; and

WHEREAS, the Authority is solely responsible for the formation, operation and administration of the Figtree PACE Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the Figtree PACE Program; and

WHEREAS, the Administrator is the administrator of the Figtree PACE Program and agrees to indemnify the City and provide insurance and add the City as an additional insured on its insurance policy or policies in connection with the operations of the Figtree PACE Program as set forth herein; and

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

1. Agreement to Indemnify. The Administrator agrees to defend, indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the Figtree PACE Program except such loss or damage which was caused by the sole negligence or willful misconduct of the City. The Administrator will conduct all defenses at its sole cost and expense and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation

upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

2. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the operation of the Figtree PACE Program, to maintain the insurance coverage set forth in Exhibit A to this Agreement.

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

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

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

6. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed

and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

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

If to the Administrator:	Figtree Company, Inc. 9915 Mira Mesa Blvd. Suite 130 San Diego, CA 92131 Attn: Chief Executive Officer
If to the City:	City of Clayton 6000 Heritage Trail Clayton, CA 94517 Attn: City Manager

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

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

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

APPROVED AS TO FORM:

____
Name: Mala Subramanian, City Attorney

"City"

City of Clayton, a municipal corporation

By______________________________
Name: Gary A Napper, City Manager

Date:____________________________

"Administrator"

Figtree Company, Inc. a California Corp.

By______________________________
Name: Mahesh Shah
Title: CEO

Date: ____________________________

EXHIBIT A

INSURANCE

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and

2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City Manager.

B. Minimum Limits of Insurance

Administrator shall maintain limits no less than:

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

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of $1,000,000 per accident; and

4. Professional Liability Errors & Omissions $1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Administrator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. City of Clayton, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Administrator; products and completed operations of Administrator; premises owned, leased or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

b. Administrator's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Administrator's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided City, its officers, employees, agents, or contractors.

d. Coverage shall state that Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of Clayton, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to City Manager.

F. **Verification of Coverage**

Administrator shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: cityclerk@ci.clayton.ca.us, or mailed to the following postal address or any subsequent address as may be directed in writing by the City Manager:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517
Attn: City Clerk

G. **Subcontractors**

Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

RESOLUTION NO. ___-2015

A RESOLUTION OF THE CITY COUNCIL OF THE CLAYTON, CALIFORNIA, CONSENTING TO PARTICIPATION IN AND THE INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE CALIFORNIA HERO PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY AND WATER EFFICIENCY IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND APPROVING THE AMENDMENT TO A CERTAIN JOINT POWERS AGREEMENT RELATED THERETO

THE CITY COUNCIL
City of Clayton, California

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

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

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

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

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

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

WHEREAS, Authority established the California HERO Program, which is such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into April 1, 1991, as amended to date, and the Amendment to Joint Powers

ATTACHMENT - 4

Agreement Adding the City of Clayton as an Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services within the City (the "JPA Amendment"), by and between Authority and the City, a copy of which is attached as Exhibit "A" hereto, to assist real property owners within the incorporated area of the City in financing the cost of installing Improvements; and

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

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Clayton, California as follows:

Section 1. This City Council finds and declares that real property owners in the City's incorporated area will be benefited by the availability of the California HERO Program to finance the installation of Improvements.

Section 2. This City Council consents to inclusion in the California HERO Program of all of the real properties in the incorporated area within the City and to the Improvements, upon the request by and voluntary and willingly agreement of owners of such real properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.

Section 3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the California HERO Program and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent and be secured by such contractual assessments.

Section 4. This City Council hereby approves the JPA Amendment (Exhibit A) and authorizes the execution thereof by appropriate City officials.

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

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

Section 7. This Resolution shall take effect once it is adopted and a fully executed indemnification agreement and insurance documentation has been provided to the City. The City Manager is authorized to execute the Indemnification Agreement (Exhibit B). The City Clerk is hereby authorized and directed to transmit a certified copy of this Resolution to the Secretary of the Authority.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 5th day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

David T. Shuey, Mayor

ATTEST

Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 5, 2015.

Janet Brown, City Clerk

Attachments:
Exhibit A – JPA Amendment Agreement Relating to WRCOG
Exhibit B – Indemnification Agreement with Renovate America, Inc.

X:\Com Dev\C D D\2015\CDD-01-15 - PACE Financing Program\CC Mtg. - 5-5-15\Hero - doc's\HERO - Resolution - CC mtg. - 5-5-15.docx

AMENDMENT TO THE JOINT POWERS AGREEMENT ADDING CITY OF CLAYTON 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 5th day of May, 2015, by City of Clayton ("City") and the Western Riverside Council of Governments ("Authority") (collectively the "Parties").

RECITALS

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

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

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

WHEREAS, Authority has established a PACE program known as the "California HERO Program" pursuant to Chapter 29 which authorizes the implementation of such PACE financing program for cities and counties 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, as it is now enacted or maybe amended hereafter, to finance Improvements to be installed on such properties; and

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

WHEREAS, pursuant to the Joint Exercise of Powers Act, the Parties are approving this JPA Agreement to allow for the provision of PACE services, through the California HERO

EXHIBIT - A

Program, including the operation of such PACE financing program, within the incorporated territory of City; and

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

MUTUAL UNDERSTANDINGS

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

A. **JPA Amendment.**

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

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

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

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

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

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

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

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

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

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

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

C. **Miscellaneous Provisions.**

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

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

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

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

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

Authority:

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

City:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517
Attn: Gary A. Napper, City Manager

6. Entire Agreement. This JPA Amendment, together with the Authority JPA, constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This JPA Amendment supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation,

inducement, promise of agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

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

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

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

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

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

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

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

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

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

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: ________________________________ Date: ________________

Executive Committee Chair
Western Riverside Council of Governments

CITY OF CLAYTON

By: ________________________________ Date: ________________

Name: David T. Shuey
Title: Mayor

INDEMNIFICATION AND INSURANCE AGREEMENT
BY AND BETWEEN
CITY OF CLAYTON
AND
RENOVATE AMERICA, INC

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the City of Clayton a municipal corporation ("City") and Renovate America, Inc., a Delaware corporation (the "Administrator"), the administrator of the California HERO Program, which is a program of the Western Riverside Council of Governments, a California joint exercise of powers authority (the "Authority").

RECITALS

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

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

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

WHEREAS, on May 5, 2015, the City Council of the City of Clayton, California adopted a Resolution authorizing the City to join the California HERO Program, and authorizing the Authority to accept applications from eligible real property owners and to conduct assessment proceedings and levy assessments within the territory of the City and authorizing related actions; and

EXHIBIT - B

WHEREAS, the Authority is solely responsible for the formation, operation and administration of the California HERO Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the California HERO Program; and

WHEREAS, the Administrator is the administrator of the California HERO Program and agrees to indemnify the City and provide insurance and add the City as an additional insured on its insurance policy or policies in connection with the operations of the California HERO Program as set forth herein; and

NOW, THERFORE, in consideration of the above premises and of the City's agreement to join the California HERO Program, the parties agree as follows:

1. Agreement to Indemnify. The Administrator agrees to defend, indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the California HERO Program except such loss or damage which was caused by the sole negligence or willful misconduct of the City. The Administrator will conduct all defenses at its sole cost and expense and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

2. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the operation of the California HERO Program, to maintain the insurance coverage set forth in Exhibit A to this Agreement.

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

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

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

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

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

If to the Administrator:	Renovate America, Inc. 15073 Avenue of Science #200 San Diego, CA 92128 Attn: _______________
If to the City:	City of Clayton 6000 Heritage Trail Clayton, CA 94517 Attn: City Manager

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

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

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

"City"

APPROVED AS TO FORM:

City of Clayton, a municipal corporation

____
Name: Mala Subramanian, City Attorney

By_______________________________
Name: Gary A Napper, City Manager

Date:_______________________________

"Administrator"

Renovate America, Inc.

By_______________________________
Name:
Title:

Date: _______________________________

EXHIBIT A

INSURANCE

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and

2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City Manager.

B. Minimum Limits of Insurance

Administrator shall maintain limits no less than:

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

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of $1,000,000 per accident; and

4. Professional Liability Errors & Omissions $1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Administrator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. City of Clayton, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Administrator; products and completed operations of Administrator; premises owned, leased or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

b. Administrator's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Administrator's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided City, its officers, employees, agents, or contractors.

d. Coverage shall state that Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of Clayton, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to City Manager.

F. Verification of Coverage

Administrator shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: cityclerk@ci.clayton.ca.us, or mailed to the following postal address or any subsequent address as may be directed in writing by the City Manager:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517
Attn: City Clerk

G. Subcontractors

Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

CITY OF CLAYTON
PLANNING COMMISSION
STAFF REPORT

Meeting Date: **April 14, 2015**

Item No.: **7.a.**

From: **Charlie Mullen**
Community Development Director

Subject: **Consider the State of California Property Assessed Clean Energy (PACE) Programs for the City of Clayton, consisting of the CaliforniaFirst, Figtree and HERO programs (CDD-01-15).**

Applicant: **City of Clayton**

RECOMMENDATION

Staff recommends the Planning Commission review and consider the State of California Property Assessed Clean Energy (PACE) Programs for the City of Clayton, consisting of the CaliforniaFirst, Figtree and HERO programs, and if determined to be appropriate, recommend participation in the PACE programs to the City Council.

BACKGROUND

Clayton 2015-2023 Housing Element

This past year the City was able to accomplish a streamlined update of our Housing Element for the eight-year 2015-2023 period. On October 14, 2014 the Planning Commission conducted a public hearing and adopted Resolution No. 04-14 recommending City Council approval of the 2015-2023 Housing Element, which was then followed up by City Council public hearing review and approval on November 18, 2014, with adoption of Resolution No. 42-2014. The final approval/certification of the 2015-2023 Housing Element for the City of Clayton was provided in writing by HCD on December 11, 2014.

Under Chapter 8 of the 2015-2023 Housing Element, Goal V states the City shall *"Encourage and maintain energy efficiency in new and existing housing"* and Implementation Measure V.1.3 states *"The City will explore home energy and water efficiency improvement financing opportunities available through PACE programs, such as HERO or Figtree PACE. To make this financing option available to Clayton residents, the City would need to adopt a resolution opting in to a Joint Powers Authority. These programs are available at no cost to the City"*. The timing of this implementation measure was identified to occur in 2015. After attending a PACE workshop, conducting internal staff review of three PACE Programs expressing interest in the Clayton market along with associated materials and information, and after researching how other local communities have addressed this matter, staff is now bringing forward the consideration of the PACE programs to the Planning Commission and then to the City Council.

ATTACHMENT - 5

State Property Assessed Clean Energy (PACE) Programs

In 2008, the State of California approved Assembly Bill 811, amending the Improvement Act of 1911, authorizing cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by property owners. Subsequent bills were passed to expand the list of eligible projects to include water efficiency improvement (AB 474 in 2009) and electric vehicle charging infrastructure (SB 1340 in 2010). Programs developed under this legislation are referred to as Property Assessed Clean Energy programs or PACE programs. PACE programs allow residential and commercial property owners located within a participating district to finance up to 100% (not to exceed 15% to 20% of their property value depending on the program) of energy efficiency, water efficiency and renewable energy projects with little or no up-front costs and pay it back over time as a voluntary property tax assessment through their existing property tax bill. The property owner voluntarily enters into a contractual agreement with a special tax district in which they reside to access financing that is secured by a lien on their property and repaid as a special assessment on their property tax bill. This means the participating property owner pays the special tax at the same time and in the same manner as other property taxes and assessments. Improvements commonly implemented through PACE include solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. One of the programs (CaliforniaFirst) also allows financing of seismic improvements through its PACE program.

PACE program financing is only one option for property owners to finance energy efficiency and water conservation improvements on their property. PACE program financing is an alternative to other private financing mechanisms, such as using cash, a home equity line of credit or a credit card, to finance these improvements. PACE financing is unique in that qualifying for PACE financing is based primarily on a property owner's equity and timeliness of property tax and mortgage payments rather than individual credit rating or debt-to-income ratio. All PACE financing debt is linked to the physical property rather than the property owner. It does not appear on the property owner's individual credit report. PACE programs offer fixed long-term interest rates, the term of which is generally equal to the useful life of the improvement (from 5 to 20 years), which might be longer than the normal term of other loans. As such, PACE program financing may offer advantages over other forms of financing to some borrowers.

In order for property owners in a jurisdiction to access PACE financing, the jurisdiction must create or join an existing special tax district and specifically authorize contracts between the special tax district and property owners for PACE financing. Since AB 811 passed in 2008, over 320 California cities and counties have joined or created special tax districts and authorized property owners' participation in PACE programs. PACE financing requires a source of capital from which property owners can borrow and repay through the special assessments. Therefore, the vast majority of cities and counties have joined existing special tax districts, which have partnered with private organizations to administer PACE programs in their jurisdictions. Only a small number of jurisdictions, including Sonoma County, the City of Sacramento, and Los Angeles County, have used their own internal funds to capitalize and support PACE funding.

The three leading PACE programs operating in Northern California are CaliforniaFirst, Figtree, and HERO, and all three have requested the City of Clayton to authorize participation in their PACE programs. Many jurisdictions have authorized all three of these organizations to work in their area, in order to offer competition and program alternatives to interested property owners. The following cities in Contra Costa County have authorized participation in PACE programs offered by CaliforniaFirst, Figtree, and HERO, as marked with an "X".

City	CaliforniaFirst	Figtree	HERO
Antioch	X	X	X
Brentwood	X		X
Concord		X	X
Lafayette	X	X	X
Martinez	X		X
Oakley	X	X	X
Pittsburg	X	X	
Pleasant Hill	X	X	X
Richmond	X	X	X
San Pablo	X	X	X
San Ramon	X	X	X
Walnut Creek	X	X	X

DISCUSSION

The following is a summary discussion of the three PACE programs being considered at this time by the City of Clayton:

CaliforniaFirst Program

The CaliforniaFirst program was created and approved by the California Statewide Communities Development Authority (CSCDA) and its participating local government members to assist property owners who want to improve the energy and/or water usage of their home while lowering utility bills and greenhouse gas emissions. Renewable Funding LLC administers the CaliforniaFirst Program and manages the program call center and daily activities of the program. CSCDA, through the program, provides financing for residential property owners. Through CSCCA and the program, property owners may finance the installation of eligible products and repay the financing through an assessment on the property tax bill. Residential property owners apply to finance energy efficiency and water conservation improvements, including but not limited to solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. CaliforniaFirst also allows financing of seismic improvements. Participation in the program is voluntary and requires the full consent of all owners on the property title. Property owners sign an assessment agreement and agree to repay the amount financed over a period of 5, 10, 15, 20 or 25 years, depending on the type of property, the financing amount, and the expected useful lifetime of the installed eligible products. An assessment lien is recorded on a property to secure the financing. Interest rates are subject to underwriting standards and competitive pricing based on market conditions, and ranging from 6.75% - 8.39% based on the term of the financing (5 - 25 years). The assessment lien will be senior to liens for mortgages and other non-governmental liens on the property. The minimum assessment amount is $5,000 with a maximum $200,000 (but must be less than 15% of the value of the property). The assessment amount plus the mortgage-related debt must not exceed 100%

of the value of a property (for more details please see attached information provided by the CaliforniaFirst Program).

Figtree Program

The Figtree program operates under the California Enterprise Development Authority (CEDA). CEDA is a Joint Powers Authority (JPA) that administers the program through a partnership with Figtree Financing. The Figtree private financing program allows commercial property owners to voluntarily place assessment liens on their property for the purpose of installing renewable energy, energy efficiency, and water conservation improvements. Figtree representatives have stated they intend to expand their program in April 2015 to also include residential property owners. The Figtree interest rates are market-based and determined at the time of financing, but have been in the 4.50% to 7.50% range. The minimum amount finance is $5,000 with a maximum not to exceed 10% of the total property value (up to 20% in some circumstances). The assessment liens are available in 5, 10, 15 and 20 year terms, not to exceed the useful life of the improvements. The Figtree program includes processing, administration and prepayment fees. Figtree assessment liens are land-secured and require no personal guarantee. Figtree states they are a full service, free market and flexible program, offering financing plans that can be tailored to a property owner's specific need.

HERO Program

The Home Energy Renovation Opportunity (HERO) program operates under the joint powers authority of the Western Riverside council of Governments (WRCOG). The HERO program is being offered to allow property owners in participating cities and counties to finance renewable energy, energy and water efficiency improvements, and electric vehicle charging infrastructure on their property. If a property owner chooses to participate, the installed improvements will be financed by the issuance of bonds by the WRCOG. The bonds are secured by a voluntary contractual assessment levied on participating owner's property. Participation in the program is 100% voluntary. Property owners who wish to participate in the program agree to repay the amount borrowed through the voluntary contractual assessment collected together with their property taxes. This financing is available for eligible improvements on both residential and non-residential properties.

OTHER DISCUSSION POINTS

Federal Housing Finance Administration

On July 26, 2010, the Federal Housing Finance Administration (FHFA) issued its statement entitled, "FHFA Statement on Certain Energy Retrofit Loan Programs" (FHFA Statement) which provided in part that:

> ...In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:
>
> - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
> - Ensuring that loan covenants require approval/consent for any PACE loan;

- Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
- Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance…"

As a result of the FHFA Statement, the PACE program stopped accepting applications for the Program from residential properties and stopped providing financing through the program to residential property owners in the participating communities.

To address this issue, in March 2014, the Governor of the State of California created a PACE Loss Reserve Program. The PACE Loss Reserve Program, authorized by Senate Bill 96 (2013), is designed to address FHFA's financial concerns by making first mortgage lenders whole for any losses in a foreclosure or a forced sale that are attributable to a PACE loan. If a mortgage lender forecloses on a home that has a PACE lien, the reserve can be used to cover PACE payments during the foreclosure period. Alternatively, if a local government sells a home for unpaid taxes and the sale price falls short of the outstanding tax and first mortgage amounts, the reserve can be used to cover the shortfall (up to the amount of outstanding PACE payments). By covering these types of losses, the Program puts the first mortgage lender in the same position it would be in without a PACE lien.

The $10 million Loss Reserve will be available for all PACE loans issued by enrolled PACE programs and reported to California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) for the length of their terms. PACE programs will report to CAEATFA semi-annually and pay a small administrative fee based on the principal amount of new loans they issue.

Coinciding with strong demand statewide by residential property owners to finance the installation of energy efficient and water conserving improvements, the PACE programs have regained traction and interest. However, there can be no assurance the FHFA will not act to reemphasize, or take other similar action to issuing, the FHFA Statement in the future. Property owners with assessment liens must also understand potential risk implications for a refinancing or sale of the property and must assume the associated risk.

<u>Contra Costa County Association of Realtors</u>

In January 2015, staff was informed by a representative of the Contra Costa Association of Realtors (CCAR) that its Board of Directors was opposed to the PACE programs, but they were not inclined to put that position in writing. Staff recently, reached out to CCAR to see if they still opposed the program and was informed that CCAR has since changed their stance on the PACE program and they now take "no position".

<u>Indemnification Agreements</u>

To protect the financial and liability interests of the City of Clayton, staff will recommend the City enter into Indemnification Agreements with each of the three PACE program administrators, CaliforniaFirst, Figtree and HERO. A template PACE program Indemnification Agreement will be used that has been reviewed and approved by the City Attorney.

Potential benefits to property owners include:

- Eligibility: In today's economic environment, alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements or electric vehicle charging infrastructure may not be available. Some property owners do not have financing options available that would provide funding for improvements that lower their utility bills.
- Savings: Energy and water rates continue to rise and investing in and installing energy efficient, water efficient and renewable energy improvements help to reduce utility bills.
- 100% voluntary. Property owners can choose to participate in the program at their discretion. Improvements and properties must meet eligibility criteria in order to qualify for financing.
- Payment obligation stays with the property. The voluntary contractual assessment stays with the property upon transfer of ownership. Certain residential conforming mortgage providers will, however, require the assessment be paid off at the time the property is refinanced or sold.
- Prepayment option. The property owner can choose to pay off contractual assessments at any time, subject to applicable prepayment penalties.
- Customer oriented program. Part of the success of the PACE programs is their customer service. Committed funding partners provide funding promptly upon project completion resulting in both property owner and contactor satisfaction.

Potential benefits to the City include:

- An increase in local and regional jobs.
- An increase in property values (energy efficient homes and buildings are generally worth more money).
- An increase in sales, payroll and property tax revenue.
- As in conventional assessment financing, the City is not obligated to repay the bonds or to pay any delinquent assessments levied on the participating properties.
- All PACE program and assessment administration, bond issuance and bond administration functions are handled by the three program administrators CaliforniaFirst, Figtree and HERO. After implementation of the PACE programs, City staff time should be minimal and limited to referrals to the PACE program administrators.
- By joining and using these existing and already established PACE programs, the City can simply refer property owners to these financing programs, rather than undertake time and costly expense of trying to establishment its own PACE program.
- The City will have completed Implementation Measure V.1.3 of the 2015-2023 Housing Element.

City Role

Other than approving Resolutions permitting designated PACE Programs to conduct business and operate within our municipal jurisdiction (along with the appropriate City Business License), the City assumes no role or responsibility in or of the PACE Programs. Each PACE Program is entirely independent of the City and the City is not the party for questions or concerns of prospective participants. The Indemnification Agreement signed by each PACE Program business will ensure the separation of any risk or program liability.

ATTACHMENTS

1. CaliforniaFirst program brochures and/or information
2. Figtree program brochures and/or information
3. HERO program brochures and/or information

X:\Com Dev\C D D\2015\CDD-01-15 - PACE Financing Program\PC Mtg. - 4-14-15\SRPC - PACE Programs - 4-14-15 (Final).docx

ATTACHMENT – 1

CaliforniaFirst

Program Brochures and/or Information

CaliforniaFIRST

Bringing CaliforniaFIRST PACE Financing to the City of Clayton's Businesses and Homeowners

RENEWABLE FUNDING

What Is PACE? (Property Assessed Clean Energy)

A ***voluntary***, ***quickly accessed*** financing mechanism that can pay for an assortment of energy efficiency, renewable energy, water conservation, and seismic upgrades with ***no upfront costs to property owners***, **no costs to local governments**, ***repayment appearing as a line-item on property tax bills***, and typically ***transferable*** to a new owner.

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

CALIFORNIA COMMUNITIES JOINT POWERS AUTHORITY

- Establishes program
- Provides complete admin and application processing
- Issues private placement bond

$$ Upfront

$$ Repaid on tax bill

- Identifies work & chooses contractor
- Applies for financing
- Enters into "Assessment Contract" with CSCDA
- Repays financing on property tax bill

CaliforniaFIRST

RENEWABLE FUNDING

PACE Benefits

- Creates a more dynamic marketplace for energy efficiency, solar energy, and water conservation financing
- Increases number of homeowners and business owners who can finance utility bill saving upgrades to their homes/buildings
- Grows local businesses, who increase hiring
- Increases property values
- Over $500 million financed in CA over the last few years, hundreds of millions in the pipeline
- CaliforniaFIRST alone has $300 million in capital ready to deploy today
- Reduces water consumption, electricity use, natural gas use
- Increases renewable energy generation

Where is CaliforniaFIRST?

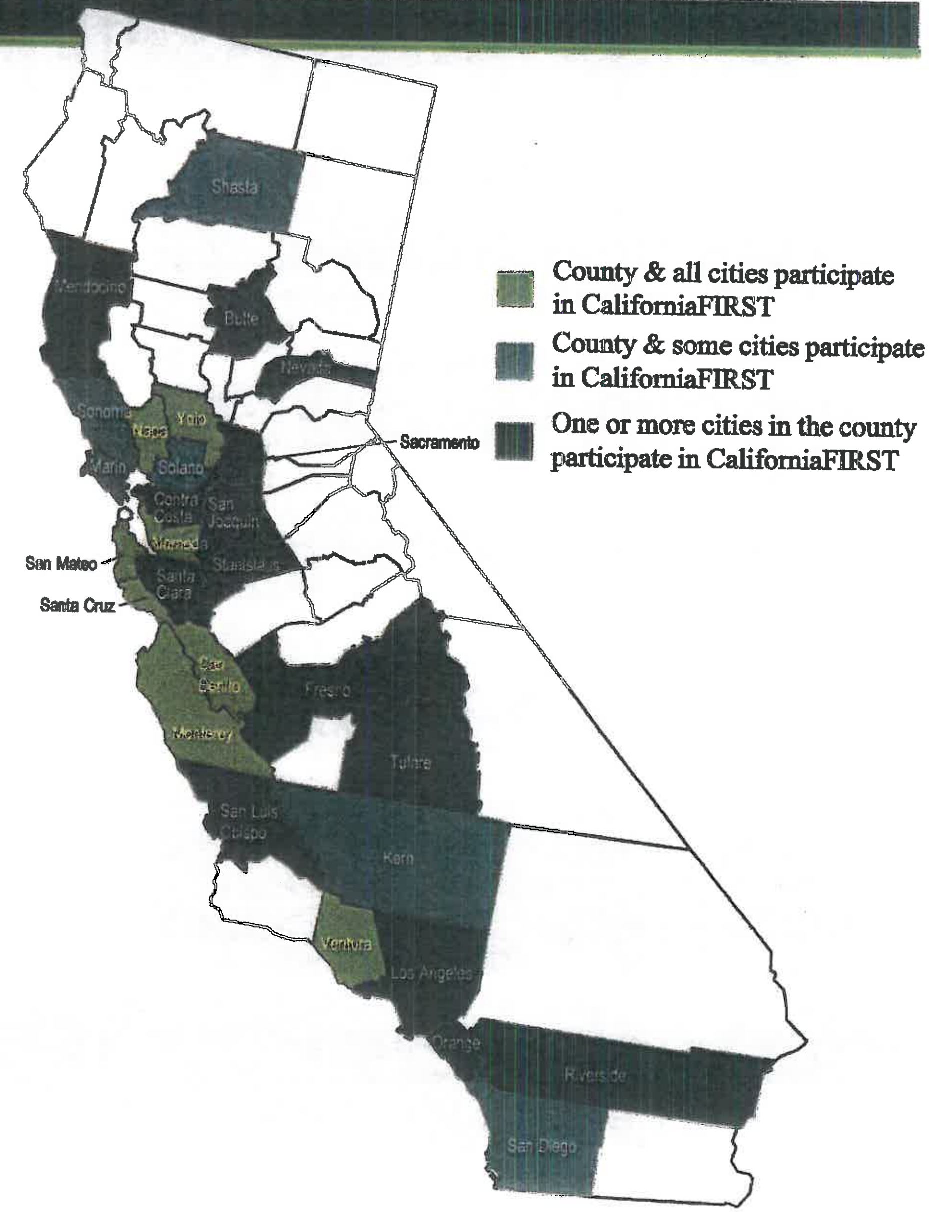
(by May, 2015)

CaliforniaFIRST *(see map →)*

- Almost 300 active jurisdictions
- 20+ counties
- Covering 60+% of CA's pop.

All PACE Programs

- Over 325 jurisdictions
- 40+ counties
- 80%+ of CA's pop.



Jurisdictions in Contra Costa County and PACE Opt-In Status

Jurisdiction	PACE
Antioch	Y
Brentwood	Y
Clayton	
Concord	Y
Danville	Y
El Cerrito	Y
Hercules	
Lafayette	Y
Martinez	Y
Moraga	

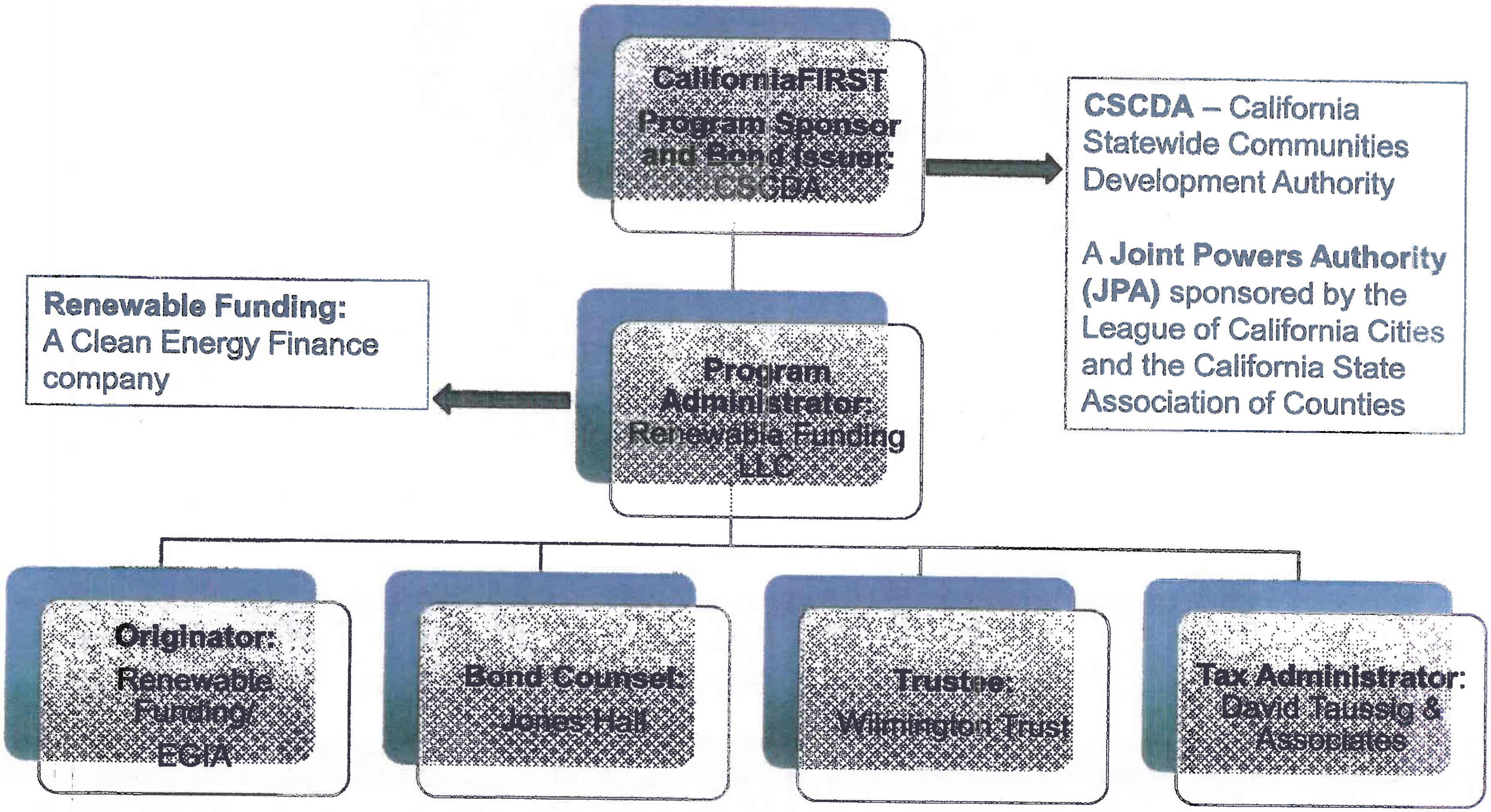
Jurisdiction	PACE
Oakley	Y
Orinda	
Pinole	
Pittsburg	Y
Pleasant Hill	Y
Richmond	Y
San Pablo	Y
San Ramon	Y
Walnut Creek	Y
Unincorporated County	

PACE programs in Contra Costa County are now available to 70%+ of the county's single family homeowners

CaliforniaFIRST

RENEWABLE FUNDING

Who: CaliforniaFIRST's Team Structure



CaliforniaFIRST

RENEWABLE FUNDING

Who: Contra Costa County and CSCDA

- $1.8 billion in bonding activity since 1993 throughout the County
- Bonds issued on behalf of 100+ borrowing entities, including:
  - 15 of the County's Cities
  - The County
  - Fire and Flood Control and Water Conservation Districts
  - Non-profits
  - Industrial Companies (Industrial Development Bonds)
  - Affordable Housing Developers

CSCDA
CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

How Much?: Financing Terms

Years to Repay	Interest Rates*
5	6.75%
10	7.59%
15	7.99%
20	8.29%
25 (solar only)	8.39%
Closing Costs (% of project costs):	~6.5%

No Prepayment Penalties

* For most homeowners, the interest paid is tax deductible, much like with a mortgage. We advise all CaliforniaFIRST clients to consult with their CPA on this tax deductibility question.

Qualifying for *Residential* PACE Financing

- No minimum FICO credit score required
- No recent missed mortgage or property tax payments
- Homeowner must have at least 10% equity in the home
- Project cost may not exceed 15% of the estimated market value of the home (or $200,000, whichever is less)
- Minimum project cost: $5,000
- Products to be installed must meet minimum efficiency and performance standards

How We Ensure Quality: Consumer Protections

<table>
<tr><th></th><th>CALFIRST</th><th>HELOC</th><th>HEL</th><th>Personal Unsecured Loan</th><th>Credit Card</th></tr>
<tr><td>Contractor Quality Verified</td><td>Yes</td><td colspan="5">By homeowner</td></tr>
<tr><td>Only high performing products</td><td>Yes</td><td colspan="5">By homeowner</td></tr>
<tr><td>3rd Party verification of workmanship</td><td>Yes</td><td colspan="5">No</td></tr>
<tr><td>Contractor consequences for bad work</td><td>Yes</td><td colspan="5">No</td></tr>
<tr><td>Dispute resolution process</td><td>Yes</td><td colspan="5">No</td></tr>
<tr><td>All calls to call center recorded</td><td>Yes</td><td colspan="5">N/A</td></tr>
</table>

Comparing PACE to Other Financing Options

Source of Funds→	CALFIRST	HELOC*	HEL	Personal Unsecured Loan	Credit Card
Interest Rate	6.75% - 8.39% (fixed)	3% - 7% (variable)	6% - 9% (fixed)	6% - 10% + (fixed)	5% - 25% (variable)
Tax Deductibility of Interest	Yes	Yes	Yes	No	No
Minimum Finance Amounts	$5K	$1	$1,000	$1	$1
Maximum Finance Amounts, and Primary Limiting Factors	Lesser of $200K or 10% of home equity	Limited by Combined LTV, DTI	Limited by Combined LTV, DTI	Limited by DTI	Limited by DTI
Minimum Loan Term	5 years	1 day	5 year	1 day	1 day
Maximum Loan Term	20 years (25 for solar)	20 years	20 years	Unlimited	Unlimited
Speed to Approve Financing Application	<1 day	1 month+	1 month+	1-2 weeks	1 day
Key Qualifying Criteria	Equity in the home	FICO, Combined LTV, DTI	FICO, Combined LTV, DTI	FICO, DTI	FICO, DTI
Transferability of Repayment*	Typically, yes	No	No	No	No

* Only 12% of owner-occupied homes have a HELOC in place, 8% of homes owned by >65 years old, 7% of African-American owned homes, 9% of Hispanic-owned homes

CaliforniaFIRST

RENEWABLE FUNDING

How a Local Government Participates in CALFIRST

Pass CaliforniaFIRST Opt-In Resolution

RESOLUTION NO. ______

RESOLUTION AUTHORIZING THE CITY OF ________TO JOIN THE CALIFORNIAFIRST PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE INCORPORATED TERRITORY OF THE CITY; AND AUTHORIZING RELATED ACTIONS

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

WHEREAS, California Communities has established the CaliforniaFIRST program (the "CaliforniaFIRST Program") and will provide financing for certain improvements authorized by Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), including, but not limited to, renewable energy, energy efficiency and water efficiency improvements and seismic strengthening 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 (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid contractual assessments; and

Costs to Local Governments: **$0 – Nada – Zilch – Nothing - Zeeero**

Thank you very much!

CaliforniaFIRST
Jonathan Kevles
jkevles@renewfund.com
(510) 350-3709
www.CaliforniaFIRST.org
info@californiafirst.org

CaliforniaFIRST

RENEWABLE FUNDING

CaliforniaFIRST
Energy Saving Financing

Frequently Asked Questions

1. What is CaliforniaFIRST?

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

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

2. Who are the members of CSCDA?

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

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

CaliforniaFIRST is currently available in 27 counties, with 180+ participating local governments (cities and unincorporated county areas) located throughout California. See the CaliforniaFIRST web site for a list of all participating jurisdictions.

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

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

No. CaliforniaFIRST uses private capital to fund every project. Costs to administer the program are paid by program participants, through fees that are rolled into each project's financing. County tax assessors and tax collectors incur small costs to place each PACE assessment on the tax rolls, and to collect and distribute the PACE assessment payments. Counties are reimbursed for these costs through the abovementioned fees. Cities do not incur any costs as a result of opting-in to the program. Some cities and counties may *voluntarily* expend resources to increase public awareness among property owners of PACE as a financing option.

5. What are the benefits?
CaliforniaFIRST solves many of the financial hurdles facing property owners wanting to install energy and water improvements.

- Competitive, fixed interest rates (which are effectively even more competitive when homeowners are eligible to deduct the interest portion of the PACE payments from their taxes[1])
- Up to a 25 year payback term
- Decreased utility bills from reduced electricity and water usage
- Qualifying for financing is not based on personal credit scores
- The PACE lien payment obligation usually transfers to the new owner if the property is sold

6. Is this a voluntary program?
Yes. Utilizing CaliforniaFIRST financing is completely voluntary. Properties and property owners that don't participate remain unaffected.

7. How is CaliforniaFIRST different from traditional financing?
CaliforniaFIRST is financed through assessments collected on the property tax bill, and the assessment obligation may be assumed by the new owner when the property is sold.

8. How do I qualify for financing?
Qualifying for CaliforniaFIRST financing is based on:

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

Qualifying is not based on personal credit scores.

9. How much money can I borrow?
The minimum amount that can be financed is $5,000. The maximum financing amount is 15% the property value, but may not exceed $200,000.

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

10. What are the interest rates?
As of November 12, 2014, our interest rates are:

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

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

11. How is the length of the repayment period determined?
Repayment periods will range from 5, 10, 15, 20, or 25[2] years, depending on the homeowner's preference, and limited by the expected useful life of the most costly product of the project's CaliforniaFIRST-financed improvements.

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

13. Are there any penalties for prepayment of the PACE assessment?
There are no penalties for paying all or a portion of the PACE assessment early.[3] Please see Question #18 below for additional information.

14. What happens when I sell my property?
As part of the property record, the assessment will be disclosed at the time of property sale, and the remaining unpaid balance of the financed amount will be transferred to the new property owner.

15. Can CaliforniaFIRST finance solar leases or Power Purchase Agreements (PPAs)?
Yes, pre-paid solar leases and PPAs can be financed through CaliforniaFIRST.

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

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

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

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

17. Is there an application fee?
No, there is no fee to apply for CaliforniaFIRST financing.

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

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

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

21. Who do I contact with additional questions?
CaliforniaFIRST staff are available to answer additional questions via email at info@CaliforniaFIRST.org or by phone at (844) 589-7953.

CaliforniaFIRST
ENERGY SAVING FINANCING

CaliforniaFIRST's Quality Assurance and Consumer Protection Measures

The following quality assurance and consumer protection measures provided through CaliforniaFIRST do not exist when a homeowner finances their energy and water upgrade projects through their home equity line of credit, home equity loan, personal unsecured loan, or credit card.

- Participating contractors must become certified. Our certification process includes a check of the contractor's:
  - License status with the California Contractors State Licensing Board (CSLB)
  - Better Business Bureau grade (grade "B" or better)
  - Meet the CSLB's bonding and workers' compensation insurance requirements
  - Liability insurance (minimum coverage of $1 million)
  - Evidence that they have been in operation for a minimum of one year and have installed the equipment, products or materials indicated on their contractor's license (or provide evidence of equivalent experience).
- All Eligible Products must be installed by a Participating Contractor.
- Only products from our Eligible Products list qualify for financing. To be on the list, a product must meet minimum efficiency and/or other performance standards.
- Project completion sign-off includes a check that all required permits from the city, county, and any other agency are completed and valid.
- A third party quality assurance firm conducts a minimum check of contractors' projects, with newer contractors and contractors on probation receiving more frequent checks.
- A process for putting contractors on probation for bad work quality or validated consumer complaints, which can ultimately lead to removal of the contractor from the Participating Contractor pool.
- A dispute resolution process for homeowners and contractors.
- 100% of calls to our call center are recorded.

For additional information, please visit www.CaliforniaFIRST.org or call (844) 589-7953.

CaliforniaFIRST
ENERGY SAVING FINANCING

Consumer Protections and Benefits

Financer	CAFirst	Home Equity Line of Credit	Home Equity Loan	Personal Unsecured Loan	Credit Card
Contractor Quality Verified	Yes	Verified by Homeowner			
Only High Performing Products	Yes	Verified by Homeowner			
3rd Party Verification of Workmanship	Yes	No			
Contractor Consequences for Bad Work	Yes	No			
Dispute Resolution Process	Yes	No			Maybe

For additional information, please visit www.CaliforniaFIRST.org or call (844) 589-7953.

CaliforniaFIRST
ENERGY SAVING FINANCING

Eligible Measures

ENERGY EFFICIENCY PRODUCTS

- Air-Source Heat Pump
- Applied Window Films
- Attic Fan
- Attic Insulation
- Boiler
- Ceiling Fan
- Central Air Conditioner
- Cool Roof – Performance
- Cool Roof – Prescriptive
- Cool Wall
- Doors
- Duct Insulation
- Duct Replacement and/or Sealing
- Electric Heat Pump Tank Water Heater
- Evaporative Cooler
- Floor Insulation (over unconditioned space)
- Furnace
- Gas Pool Heater
- Gas Storage Tank Water Heater
- Gas Tankless Water Heater
- Geothermal Heat Pump
- Indoor Lighting Fixtures
- Outdoor Lighting Fixtures
- Pool Pump and Motor
- Programmable Thermostat Control
- Radiant Barrier
- Radiant Heating and/or Cooling (floor, wall, ceiling)
- Skylights and Tubular Daylighting Devices
- Ventilating Fans
- Wall Insulation
- Whole House Fan
- Windows

RENEWABLE ENERGY PRODUCTS

- Advanced Energy Storage Systems
- Electric Vehicle Charging Station
- Small Wind Turbines
- Solar Inverters
- Solar Panels
- Solar Pool Heating
- Solar Water Heating

WATER EFFICIENCY PRODUCTS

- Artificial Turf
- Drip Irrigation
- Greywater Systems
- Hot Water Delivery Systems
- Rainwater Catchment Systems
- Toilets
- Weather-Based Irrigation Control Systems

PLEASE NOTE: We will consider measures that are not listed on a case-by-case basis.

All eligible products must be installed by a CaliforniaFIRST-approved contractor.

For additional information, please visit www.californiafirst.org or call (844) 589-7953

CaliforniaFIRST
ENERGY SAVING FINANCING

Property and Property Owner Eligibility

PROPERTY ELIGIBILITY

- Property must be in a participating community
- Property must be residential
- Manufactured homes approved if permanently attached to property
- No current involuntary liens and/or judgments totaling more than $1,000 for all property owners

PROPERTY OWNER(S) ELIGIBILITY

- Applicant(s) must be the owner(s) of record of the property
- All property owners must sign all required documentation
- No current involuntary liens and/or judgments totaling more than $1,000 for all property owners
- Property owner(s) must be current on their property taxes for the prior 12 months
- Property owner(s) must certify that property taxes have not been paid late more than once during the prior 3 years (or since the purchase if owned by them for less than 3 years)
- Property owners must be current on all subject property-secured debt at the time of application and cannot have had more than one 30-day mortgage-related late payment over the previous 12 months
- There must be no notices of default or foreclosure filed against the property within the last 2 years
- No bankruptcies (business or personal) in the last 2 years. The property must not be an asset in any bankruptcy proceeding
- Minimum financing amount is $5,000
- Maximum amount financed is the lesser of $200,000 or 10% of the value of the property and combined amount financed under the program plus mortgage-related debt cannot exceed 100% of the value of the property
- Energy efficiency, renewable energy, and water efficiency products; permanently fixed, new products; must meet minimum efficiency and/or other requirements for eligible products
- Property title cannot be subject to power of attorney, easements or subordination agreements restricting authority of the property owner(s) to a PACE lien

ATTACHMENT – 2

Figtree

Program Brochures and/or Information

Government Brochure

February 2014

Figtree FINANCING

1-877-577-7373 | info@figtreefinancing.com

Figtree FINANCING

1-877-577-7373 | info@figtreefinancing.com

INTRODUCING PACE FINANCING FOR ENERGY UPGRADES

ABOUT FIGTREE FINANCING

Figtree is a San Diego-based clean energy finance company Providing Property Assessed Clean Energy (PACE) funding that puts economic benefits of energy efficiency, renewable energy and water conservation upgrades within reach of most property owners. Requiring no money down, Figtree's unique brand of PACE financing gives property owners the freedom to amortize payments for a period of up to 20 years via their property tax bills. Figtree is the first company in the U.S. to successfully raise private capital for PACE projects via a multi-jurisdictional bond issue.

Be Sustainable

•

Lower Your Energy Bills

•

Watch Your Savings Grow

In these times of soaring energy costs and new environmental regulations, it's time to protect your finances. Property Assessed Clean Energy (PACE) financing from FIGTREE can help turn property owners' energy and water bills into thousands of dollars in savings each year through easy-to-implement energy efficiency, renewable energy and water conservation upgrades.

It's a timely opportunity that can save money, provide a valuable hedge against rising energy costs and preserve precious natural resources.

Property owners are prequalified for PACE financing in numerous cities and counties throughout California, and the number of jurisdictions authorizing FIGTREE to offer financing based on property values in their respective communities continues to grow. PACE financing requires no personal guarantee. Additionally, all loan balances can transfer to the next owner if you sell the property – you pay for only the benefits you receive. Payments are made as semi-annual assessment installments on your property tax bill, but participation is completely voluntary and the program does not rely on public funds.

HUNDREDS OF WAYS TO SAVE

Solar PV systems

HVAC

Boilers & chillers

Energy efficient lighting

Building controls

Windows

Occupancy sensors

Solar water heating

Pool systems

Programmable thermostats

Cool roofing

Water-efficient plumbing

And many more!

DIFFERENT THAN TRADITIONAL LOANS

Available financing of 10%-20% of property value

No personal guarantee

No money down

Fixed rate

Longer terms - up to 20 years

Lien is transferable upon sale

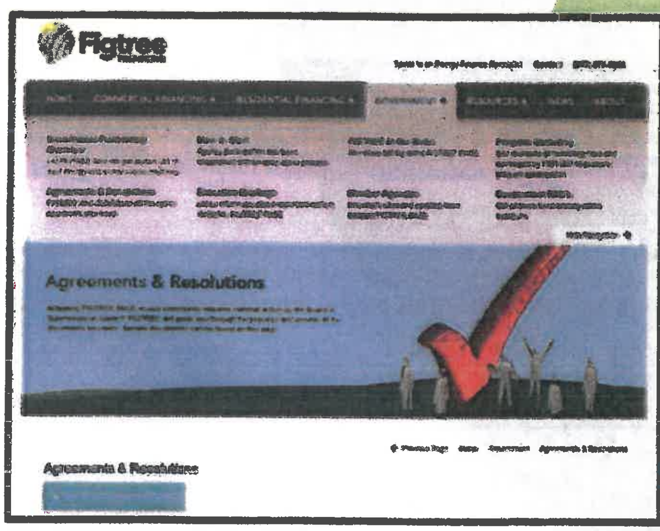
Secured by assessment on property

HOW TO ADOPT FIGTREE PACE IN YOUR COUNTY OR CITY

THE BOARD OF SUPERVISORS/ CITY COUNCIL WILL NEED TO:

1. Establish Membership with California Enterprise Development Authority (CEDA) (If not already a member)
   - Adopt Membership Resolution (no cost to join)
   - Execute Membership Agreement
2. Authorize CEDA to form the PACE Assessment District
   - Adopt Resolution of Authorization

DOWNLOAD SAMPLE DOCUMENTS AND STAFF REPORTS ONLINE



FOR ASSISTANCE CONTACT:

Erik Caldwell
Director of Government Partnerships
Office: 1.877.577.7373 ext. 1007
Email: ecaldwell@figtreefinancing.com

ABOUT CEDA

CEDA

The California Enterprise Development Authority (CEDA) is committed to helping bring financing options and information to businesses and economic developers. CEDA is a statewide Joint Powers Authority (JPA) which affords individual cities and counties economies of scale and reduced risk in the implementation of financing programs. As the sponsoring public agency of the FIGTREE PACE program, CEDA issues the PACE bonds which finance clean energy building improvements.

The Figtree PACE Program City and County Action Plan

October 2014

Figtree FINANCING

An Action Plan for Local Governments

This document provides an overview of how to implement the Figtree PACE program in your community.

Developing a successful Property Assessed Clean Energy (PACE) Program to deliver energy savings to property owners and to create jobs in your community requires time and resources. Figtree is one of the leading private PACE financing companies operating in the United States today. 82 municipalities throughout California have already partnered with us to help make renewable energy, energy efficiency, and water efficiency projects more affordable. Our program is a complete turn-key solution which will not cost your city or county anything, protects your city or county through an indemnification agreement, and has already financed renewable energy and energy efficiency retrofits for property owners across California.

By encouraging your property owners to use energy and water more efficiently, and by developing and supporting renewable energy to power buildings, your city or county can keep dollars in the local economy, create new green jobs, and improve community quality of life. Adopting the Figtree PACE program directly supports your communities climate action plan goals and by helping your residents secure a more sustainable future.

Our PACE program provides 100% upfront financing to residential and commercial property owners for a wide range of eligible property improvements. Repayment is made through a owner's property taxes with flexible repayment terms ranging from 5 to 20 years. PACE may also allow payments to be passed on to a new property owner if the property is sold before the PACE financing is paid in full.

The Figtree Program provides local governments the opportunity to implement an energy finance program without any formation costs, and is supported by the industry's best PACE professionals. Together with the California Association for Local Economic Development (CALED), through its affiliate the California Enterprise Development Authority (CEDA), Figtree delivers a comprehensive solution, that can invigorate your community with the infusion of financing for sustainable improvements. With this action plan, decide to make a difference, and discover how together we can build a better community by taking action today.

An Action Plan for Local Governments

Table of Contents

For immediate assistance in getting started please contact Figtree at:

Mr. Erik Caldwell
VP of Government Partnerships
Phone: (877) 577-7373
ecaldwell@figtreefinancing.com

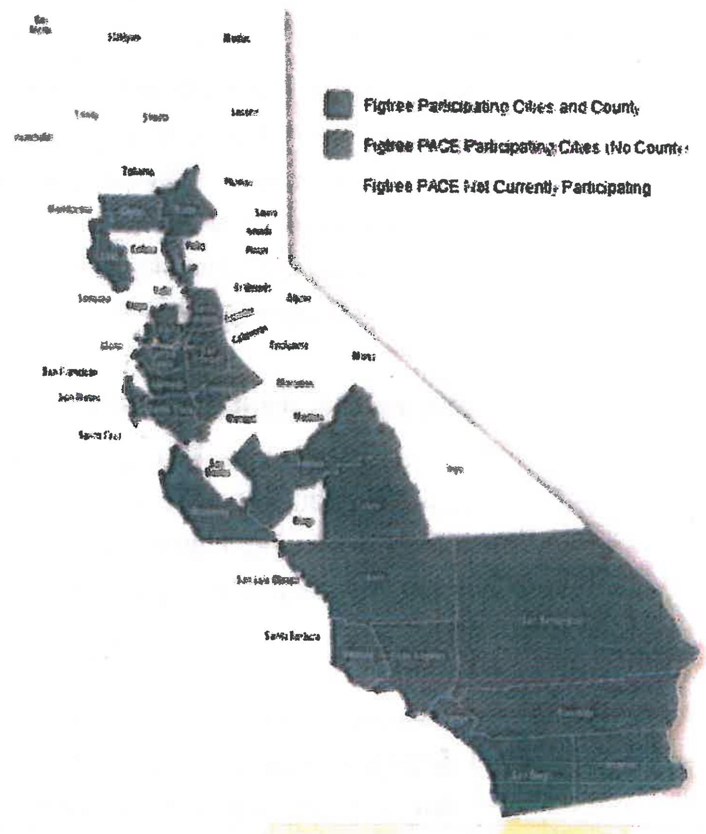
Figtree FINANCING

Program Overview

Figtree's PACE program is focused on providing PACE financing solutions for both commercial and residential property owners. Our existing commercial PACE offering has established Figtree one of the leading private commercial PACE financing companies operating in California. We have completed several dozen projects, multiple bond offerings in the capital markets and operate with $60 million of on-demand committed capital. This enables us to finance a wide variety of project sizes, ranging from $5,000 to several million dollars on-demand, as soon as they are qualified. Figtree's residential PACE offering is being developed using the same framework as our successful commercial program.

> **<u>Success Story</u>**: The Figtree PACE program is the first PACE Program to have financed energy retrofit projects across multiple cities and counties in California through the sale of municipal bonds. The Figtree PACE assessment bonds sold in December 2011, and financed a variety of energy efficiency and renewable energy projects in 4 different jurisdictions: The Cities of Fresno, Palm Springs, Clovis and Exeter.

Figtree's residential PACE program will launch in the first quarter of 2015 and will feature many of the same elements found in our commercial PACE program. The program will utilize the same legal structure and will be administered by the same professional financing team. In fact, Figtree's residential PACE program is already authorized in 82 California cities.



Cities and counties joining the Figtree program authorize CEDA to enroll both residential and commercial properties. Therefore, throughout the remainder of this document please note the information provided applies to both the residential and commercial PACE programs unless otherwise specifically noted.

Figtree FINANCING

Program Overview

The Figtree PACE Advantage for Local Government

The Figtree PACE Program offers substantial economic, environmental, social and energy benefits to participating cities and counties. By offering energy and water efficiency financing through property based assessments, the benefits realized by local governments extends from energy savings to green jobs creation.

The Figtree PACE Program is offered by CEDA and Figtree as a non-exclusive, no cost, turn-key solution which enables cities and counties to offer PACE financing to its property owners. The program currently operates in 82 cities and counties in California. Our turn-key solution also eliminates risk to cities and counties as CEDA is the entity that contracts with property owners and capital providers, while Figtree fully indemnifies each participating municipality.

Easy to Join, No Cost Program

The legal framework and program development of the Figtree PACE program has already been proven. Cities and counties need to adopt a resolution authorizing CEDA to implement the Figtree PACE Program. If a city or county is not already a member of CEDA, joining CEDA is also easily done via a single resolution and there are no costs or financial obligations to join.

Statewide Judicial Validation

In 2012, the Figtree PACE Program has completed a statewide judicial validation. Judicial validation brings a comfort level to the legal counsel, underwriter and those involved in issuing Figtree's PACE bonds while assuring attorneys in cities/counties across the state that Figtree is in compliance with all legally-binding protocols and notifications.

Success Story: The Figtree PACE program is the first PACE Program to earn state-wide judicial validation.

Figtree FINANCING

Program Overview

The Figtree PACE Advantage for Local Government (Continued)

No Liability / No Exclusivity

Your city/county is fully protected through complete indemnification provided by Figtree Financing. In addition, by adopting the Figtree PACE Program, your municipality is not required to sign an exclusivity agreement. This allows your city or county to make other PACE Programs available in the future.

Job Creation

The benefit of the Figtree PACE Program is that local jobs are created. From local contractors to the building inspectors, new jobs are being created to meet the needs for energy efficient retrofit work. Energy retrofit projects create much needed jobs in local communities. A study by Johnson Controls estimates that approximately 20 new jobs are created for each $1M invested into energy retrofit work.[1]

Greenhouse Gas Emissions (GHG) Reduction

Cities and counties have instituted GHG reduction goals and Climate Action Plans either by state mandate or through local ordinance in order to do their part to help the environment. By offering the Figtree PACE Program to your property owners, energy retrofits can become a reality that will substantially reduce CO_2 emissions.

Accessible Financing

Figtree PACE financing is available based on the value of the property. This allows for PACE financing to be available to all property owners regardless of income level or the community they live in so long as they are in good financial standing with their property taxes and mortgage.

Funding Provided by CEDA

Project funding is through taxable bonds, notes or other forms of indebtedness issued by the California Enterprise Development Authority (CEDA). A city/county will not be impacted or liable for any of the funding, but will benefit from the improvements in their communities.

1 - Johnson Controls White Paper: An Awakening in Energy Efficiency: Financing Private Sector Building Retrofits, Based on construction industry economic multipliers generated by the Regional Input-Output Modeling system (RIMS) from the Bureau of Economic Analysis, a bureau of the U.S. Department of Commerce.

Program Overview

The Figtree PACE Advantage for Property Owners

In light of the recent turmoil faced by financial institutions, financing options have become scarce for many property owners looking to make needed retrofits on their properties. Figtree PACE makes qualifying energy and water retrofits accessible and simple for property owners to realize.

No Money Down

The Figtree PACE Program offers property owners the opportunity to finance all costs associated with the financing including any audit and application fees paid. Since PACE financing requires no money down many improvements and upgrades are cash flow positive from day one. This enables property owners to immediately start saving on their energy bills and put more money into their pockets. See figure 1.

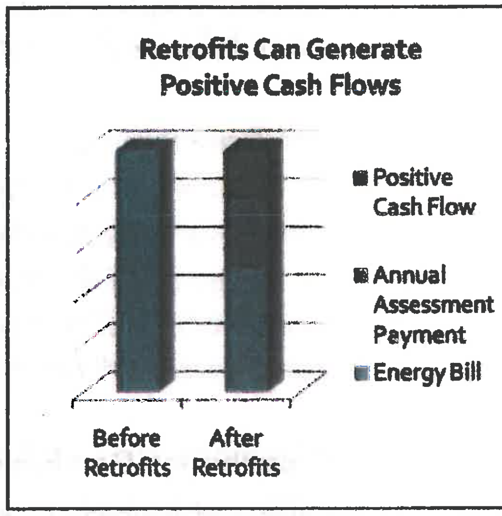


Figure 1. Positive Cash Flow

Fixed Financing Rate

The property owner locks in their interest rate for the entire life of their financing. While their energy rates may continue to rise, property owners benefit from a fixed repayment schedule that doesn't increase over time. Figtree interest rates are market dependent.

Residential Properties

Rates are currently projected to be between 5.50% to 7.50% with financing up to 10% of total property value.

Commercial Properties

Rates are currently 4.63% to 6.65% and maximum financing is up to 10% of total property value. Alternative rates are available for projects in excess of 10% of property value and projects in excess of a million dollars.

Long Term Financing, Up to 20 Years

The term of the financing will match the useful life of the property improvements. For solar, roofing, and HVAC systems the assessment term can be up to 15 or 20 years. For improvements with a shorter useful life, like lighting, the loan term will match. Most projects include a variety of improvements; in those cases Figtree will use a weighted average life to calculate the term length.

Figtree FINANCING

Program Overview

The Figtree PACE Advantage for Property Owners (cont.)

Own the System and Keep Rebates and Tax Incentives

With PACE financing the property owner owns the equipment and systems allowing them to claim all tax benefits and rebates. In contrast to other financing mechanisms, like leases and power purchase agreements (PPA), where the lessor claims all rebates and incentives.

Projects Can Generate Savings Immediately

Long term financing enables smaller annual payments. As a result most energy efficiency or renewable energy projects get better cash flow and net operating income. These smaller payments are often offset by rebates, incentives, and energy savings creating cash flow positive projects from day one.

Transfer the Lien Upon Sale

A PACE assessment lien is tied to the property, not the individual owner. As a result, it is possible to transfer the lien to the next owner. The next owner then assumes the cost of the improvements while they are receiving the benefit.

Compare Figtree PACE	Figtree PACE	Traditional Bank Loan	Solar Power Purchase Agreement (PPA)	Lease
Application Process				
Business credit review required	No	Yes	Yes	Yes
Three year financials, tax returns, and history required	No	Yes	Yes	Yes
Down payment is required	No	Yes	Potentially	Potentially
Financial Benefits				
You keep and receive financial benefits from rebates and tax incentives	Yes	Yes	No	No
You permanently add financial value and environmental benefits to your property	Yes	Yes	No	No
Fixed interest, long term ownership financing	Yes	No	No	No
General Considerations				
You can purchase many different energy upgrades like cool roofing and solar panels with one financing	Yes	Yes	No	No
You make your payment on the annual property tax bill rather than each month	Yes	No	No	No
If the property is sold, the financed amount is transitioned to the next owner	Yes	No	Negotiated	Negotiated

Figtree FINANCING

Figtree PACE Program

Figtree works with regional and national financial institutions to continually find the lowest cost of financing for participating property owners. The Figtree PACE Program is currently financed through the sale of bonds issued by CEDA. The bond proceeds are payable to:

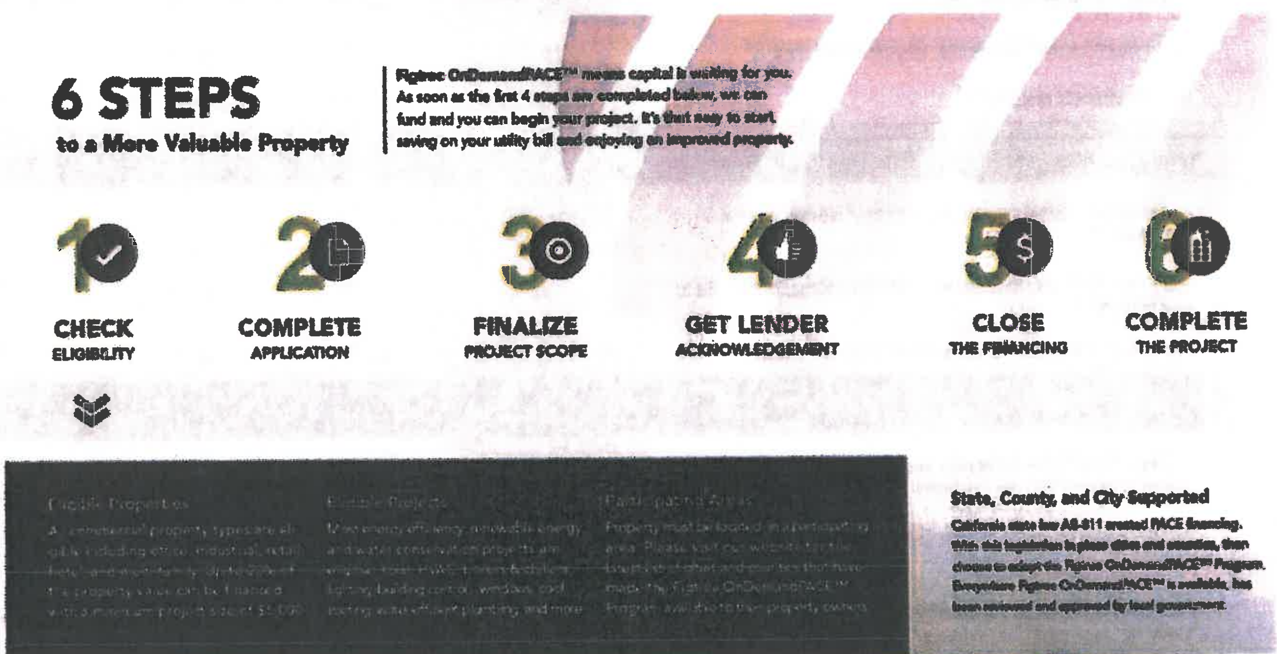
Approved Contractors — as reimbursement for installation of equipment and improvements approved under the Figtree PACE Program.

Approved Property Owners — as reimbursement for approved out-of-pocket expenses.

The bonds are not a debt of the city/county, the State of California, or any of its political subdivisions (other than CEDA). Member agencies are not liable for payment. The bonds are special obligations of CEDA payable exclusively from the revenues (secured by assessment liens on voluntarily participating properties), and amounts held in certain funds and accounts created pursuant to the Indenture.

Online Application Process

Property owners submit an application directly to Figtree for financing. Figtree evaluates the application and takes the necessary measures to ensure sound financing practices. Once a financeable amount has been approved, property owners may begin to take competitive bids from Figtree PACE registered contractors. When a bid has been selected by the property owner, Figtree works with the property owner to verify that all proposed retrofits are approved efficiency measures eligible for financing. As for billing, Figtree handles all contractor reimbursements and coordinates with the appropriate county tax collector to collect assessment repayments. The property owner repays the assessment as a line item on their property tax bill.



Figtree PACE Program

Eligibility Criteria for Figtree Financing

Property owners who meet the following minimum criteria are eligible for financing through the Figtree PACE program:

Residential Properties

- The amount of financing requested shall not exceed 10% of the value of the property.
- All existing private debt recorded against the property does not exceed 85% of the value of the property.
- There are no involuntary liens, defaults or judgments on the property in excess of $1,000.
- Property owner has not declared bankruptcy in the past seven years.
- Property owner has remained current on their property tax and mortgage payments for the past three (3) years or since owning the Property, if less than 3 years.
- The Property title is not subject to power of attorney, easements, or subordination agreements restricting our authority to subject the Property to a PACE lien.

Commercial Properties

- Property owner is current on property taxes for the property.
- Property owner is current on private property debt and has not been delinquent in the past three years.
- Property owner has not declared bankruptcy in the past five years
- Property is not listed as an asset in bankruptcy.
- The lien-to-value ratio (excluding assessed financing amount) does not exceed one hundred percent (i.e. no negative equity).
- Property is developed and located within the jurisdiction of a Participating Agency.

Figtree FINANCING

Figtree PACE Program

Contractors and Program Marketing

Contractors and Training

All contractors are eligible to participate in the Figtree PACE Program. The majority of our existing contractors are local businesses that provide services regionally or throughout California. We require contractors to have 3 years of experience (or provide 3 customer references), be a licensed contractor with the State, and maintain $1 million in general liability insurance and workers compensation insurance in order to participate in the PACE program.

As a Figtree Registered Contractor in our program contractors receive a comprehensive 1 hour one-on-one training session to review how to utilize PACE successfully, how it can help grow their business, and to answer any questions they have on the program. During this training we share best practices on rebates, incentives, and how to maximize the financial value for property owners with energy efficiency upgrades.

In addition, our program approaches property owners directly to educate them on the availability of PACE financing. If a contractor engages a property owner we are available to support them as they request to facilitate the financing of the project. This includes phone calls, Q&A, and face to face meetings.

As part of our Registered Contractors Program, Figtree performs financial modeling of projects. We create proposals that contractors can utilize to communicate the long term value of implementing energy efficiency and renewable energy measures to property owners. This helps translate the benefits to financially savvy senior decision makers. This program is in addition to our marketing materials, webinars, and on demand trainings available online.

Marketing Efforts

Truly effective marketing is one of the most challenging aspect of successfully implementing a PACE program. Understanding the channels of commerce that drive volume and executing a pro-active marketing plan is essential to achieving success. Figtree has crafted marketing strategies to overcome challenges concerning the adoption of PACE financing among property owners and contractors. These marketing strategies have rapidly expanded our growth in 2014 and have set the program up for future success.

Direct Outreach to Property Owners

Property owners need to be reached directly. They are looking for alternative financing options that allow them to update their homes and buildings. Key messages include savings on energy efficiency, increased net operating income and property value, and the availability of incentives to engage property owners.

Figtree PACE Program

Elements Specific to Commercial PACE

Figtree's commercial and residential programs are both built on the same proven platform. However the commercial program has a few key differences from our residential program offering:

Requires Lender Acknowledgement

One key factor for a commercial property owner to qualify for PACE financing is lender acknowledgement. Since most commercial mortgages have a "Due on Encumbrance" clause that would give the mortgage holder the right to call the loan due if additional debt is placed on the property without prior acknowledgement, the mortgage lien holder is required to provided written acknowledgement before PACE financing is provided by Figtree. Figtree coordinates the process and reaches out to the mortgage lender directly to obtain the required acknowledgement on behalf of the property owner.

Success Story: Figtree successfully negotiated lender acknowledgements from regional banks like Premier Valley Bank and WestAmerica Bank as well as national banks like Wells Fargo and US Bank.

Free Up Capital Budgets and Preserve Credit

Utilizing PACE financing preserves capital expenditure or maintenance budgets for other projects. In addition, off balance sheet PACE financing does not inhibit the property owner's credit, preserving their borrowing capacity for future needs or working capital.

Pass Through Costs to Tenants with Triple Net Lease

PACE assessment liens are administered through a property's tax bill. Triple net leases allow for an allocated portion of the property taxes to be paid in the lease. Since the PACE assessment is on the property tax bill the tenant can share in the cost of the upgrades. Passing the costs through to the tenant solves the split incentive issue commonly found with leased spaces. The tenant is now paying for the benefits they receive in better facilities and the energy savings.

Assessment District Financing Structure

Legal Authority for PACE

Assembly Bill 811, signed into law in 2009, amended existing California law which already allowed for contractual assessment financing for public improvements. The law specifically allows cities and counties to establish PACE programs to finance privately owned renewable energy, energy efficiency, and water conservation measures. Additionally, the law requires improvements financed using PACE to be permanently fixed to real property. California law also enables municipalities to authorize more than one PACE provider.

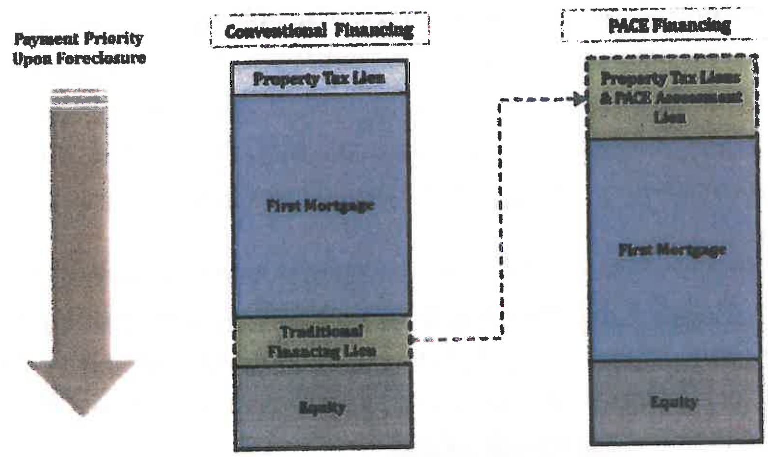


Figure 2. PACE Lien Priority

Assessment Districts are Well Established in Law

Municipal assessment financing has been around for over 100 years and many property owners around the country will find assessment line items on their property tax bill for improvements to sewer systems, sidewalks, street lighting and many other purposes. In fact, coordinating between tax assessors and bond trustees to ensure proper billing and remittance for all the various assessment districts in existence has evolved into a specialized business expertise known as assessment district administration. Figtree has incorporated this expertise into its PACE program in California by partnering with Willdan Financial Services (Willdan). Willdan is the leading assessment district administrator nationwide.

The role this Willdan plays in Figtree's PACE Program is in many ways akin to a loan servicer in more traditional financing products. Although there are many different taxing jurisdictions participating Figtree's program and therefore many different tax assessor's offices, there is only one entity coordinating remittances and interfacing with the bond trustee for the benefit of our capital partners.

Assessment District Financing Structure

The Figtree / CEDA Relationship

Perhaps the most important relationship in Figtree's California program is with the California Enterprise Development Authority. CEDA is a statewide Joint Powers Authority (JPA) created under California statute as a governmental membership organization with a controlling board distinct from any of its members. In this context, CEDA is the legal entity at the center of the Figtree PACE program. As such, CEDA is responsible for:

- Entering into Associate Membership Agreements with municipalities that wish to join the Figtree PACE Program;
- Executing Contractual Assessment Agreements with property owner specifying the assessment terms;
- Placing PACE assessment liens on properties and enforcing assessment collection remedies; and
- Issuing bonds secured by PACE assessment liens.

Figtree is the administrator of the program under a Program Administration Agreement executed with CEDA, and not individual municipalities. This eliminates the need for a lengthy procurement process. Under this agreement, Figtree is responsible for:

- Developing the legal infrastructure;
- Developing and maintaining the program report;
- Arranging for financing capital;
- Promoting expansion and municipal adoption of the program;
- Marketing the program in the marketplace as the Figtree PACE Program; and
- Originating PACE assessments in compliance with statute and programmatic underwriting guidelines.

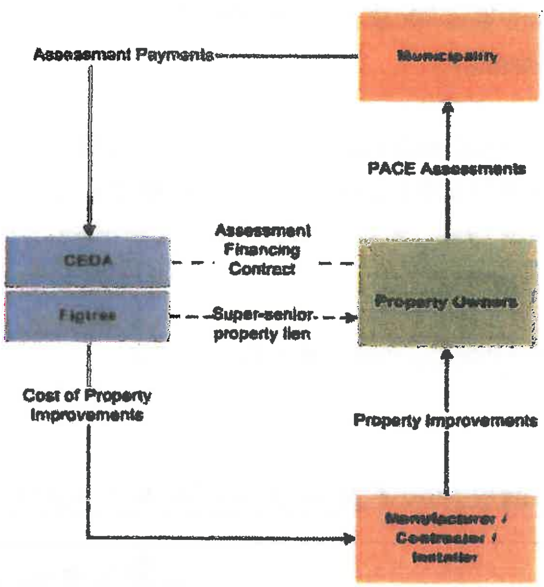


Figure 3. Figtree PACE Financing Cycle

The relationship between Figtree and CEDA is a partnership based on shared objectives around providing a cost effective successful PACE financing product to commercial property owners within CEDA's membership jurisdictions. Both Figtree and CEDA are compensated for their roles from upfront and ongoing fees funded by the participating property owners as established in each Contractual Assessment Agreement.

The Figtree Professional Team

Figtree has assembled a strong professional team of strategic partners within our program. Our current strategic partners are as follows:

Program Administrator and Originator: Figtree Company, Inc. program finance and administration.

Statewide Governmental Conduit: California Enterprise Development Authority (CEDA) is a California Joint Powers Authority established by the California Association for Local Economic Development (CALED). Figtree and CEDA have established an exclusive partnership to offer the Figtree PACE Program to municipalities across California.

Bond Trustee: Deutsche Bank's Trust & Securities Services unit has nearly 2 trillion of assets under custody and is one of the world's largest and most experienced providers of administrative services for capital market instruments and other types of financing. It provides custody, clearing and related services in more than 30 markets.

Asset Servicer: Willdan Financial Services (Willdan), a subsidiary of publicly traded Willdan Group, Inc. (NASDAQ: WLDN), has a proven, specialized assessment administration practice that has been forming and administering assessment districts for over 20 years.

Issuer Counsel & Bond Counsel: Kutak Rock LLP is a national law firm of more than 500 lawyers with offices from coast to coast. The firm has represented hundreds of state and local governmental units and a substantial number of Fortune 500 corporations.

Securitization Counsel: Kramer Levin Naftalis & Frankel, LLP is a global law firm with an unqualified expertise in the process of securitization. The lawyers of their Securitization group have been, and continue to be, leading innovators in this constantly evolving discipline.

Corporate Counsel: Stradling Yocca Carlson & Rauth, P.C.

Structuring Advisor and Placement Agent: KGS-Alpha Capital Markets, L.P.

What if I already have a PACE program?

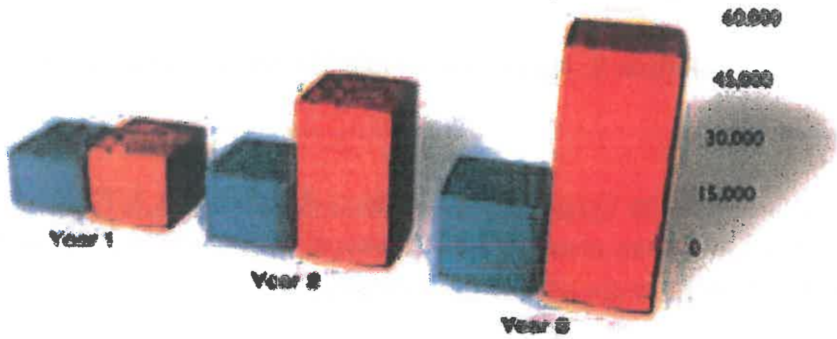
Benefits of a Non-Exclusive Arrangement

Property owners are best served when municipalities allow for multiple PACE programs to operate. A growing number of private companies are implementing privately-funded PACE programs on a significant scale. While the core service provided by each of these companies may appear to be similar, each has a different approach that may make their business model more or less beneficial to different property owners. Additionally, the interest rates offered by these companies will vary over time, no different than identifying who provides the lowest interest rates on mortgages, auto loans, or any other loan.

Municipal governments rarely insert themselves into the process of determining which private companies are allowed to offer services within their communities; they allow the supply and demand of the marketplace determine which companies offer the best services to meet the needs of their residents. This same principle should apply to PACE financing as well.

A non-exclusive open PACE marketplace ensures that PACE program benefits and services will be robust and lasting. Competition is good for business. It improves the product, program, and experience for property owners by encouraging companies to provide what they believe to be the best possible product, including quality customer service.

In California, establishing a non-exclusive marketplace has become a best practice among municipalities. They are still taking the time to ensure programs are appropriately vetted and that they meet their requirements. But their risk assessment process is now less arduous, because providing an open marketplace is more straightforward than comparing the pros and cons of individual programs, especially since a winning solution can change based on the consumers need.



Figtree
FINANCING

Adopting Figtree PACE

Adopting the Figtree PACE Program is easy. CEDA will perform the assessment district proceedings required on behalf of your city or county. This includes passing the Resolution of Intention and Holding the Public Hearing. All your public agency needs to do is pass a resolution authorizing CEDA to perform the assessment district proceedings on behalf of your public agency. If your city or county is not already a member of CEDA, then an additional resolution joining CEDA would also be adopted.

As the program administrator, Figtree will provide you the resolutions needed as well as a sample staff report that can be used.

Assessment District Formation Timeline

Since there are many Cities and Counties that CEDA will be performing the assessment district proceedings for, it is necessary for your public agency to notify Figtree as soon as possible of your interest to participate. See Figure 3 for the assessment district formation schedule sample.

	ACTION	DETAIL
Date TBD	Adopt Resolution Authorizing CEDA	Your city/county adopts a Resolution Authorizing CEDA to perform Assessment Proceedings on your city/county's behalf.
Date TBD	Utility Notices	Figtree mails out utility notices to Utility Providers per Streets & Highways Code Section 5898.24(b), 60 days prior to CEDA Public Hearing
Date TBD	Resolution of Intention	CEDA initiates assessment proceeds and Adopts the Resolution of Intention.
Date TBD	Publication	CEDA publishes Notice of Public Hearing per Streets & Highways Code Section 5898.24(a) at least 20 days before hearing.
Date TBD	Public Hearing	CEDA holds Public Hearing and Figtree PACE Program goes live in participating public agencies.

Figure 3. Assessment District Formation Schedule Sample

Please visit our website Government Section / Agreements & Resolutions for additional detail and resolutions. You can also call Erik Caldwell, Director of Government Partnerships at (877) 577-7373 to learn more about how to get started.

Figtree FINANCING

Figtree PACE Financing - Commercial Participating Areas

All commercial property types are eligible including office, industrial, retail, hotel, and multi-family. Up to 20% of the property value can be financed with a minimum project size of $5,000.

Don't see your city or county? Contact Figtree at 877-577-7373 for assistance with making Figtree PACE available in your area.

Figtree Financing is working with cities and counties across California to make PACE financing available. If you have a project in a city or county that is not shown as active below, please contact us for the latest status.

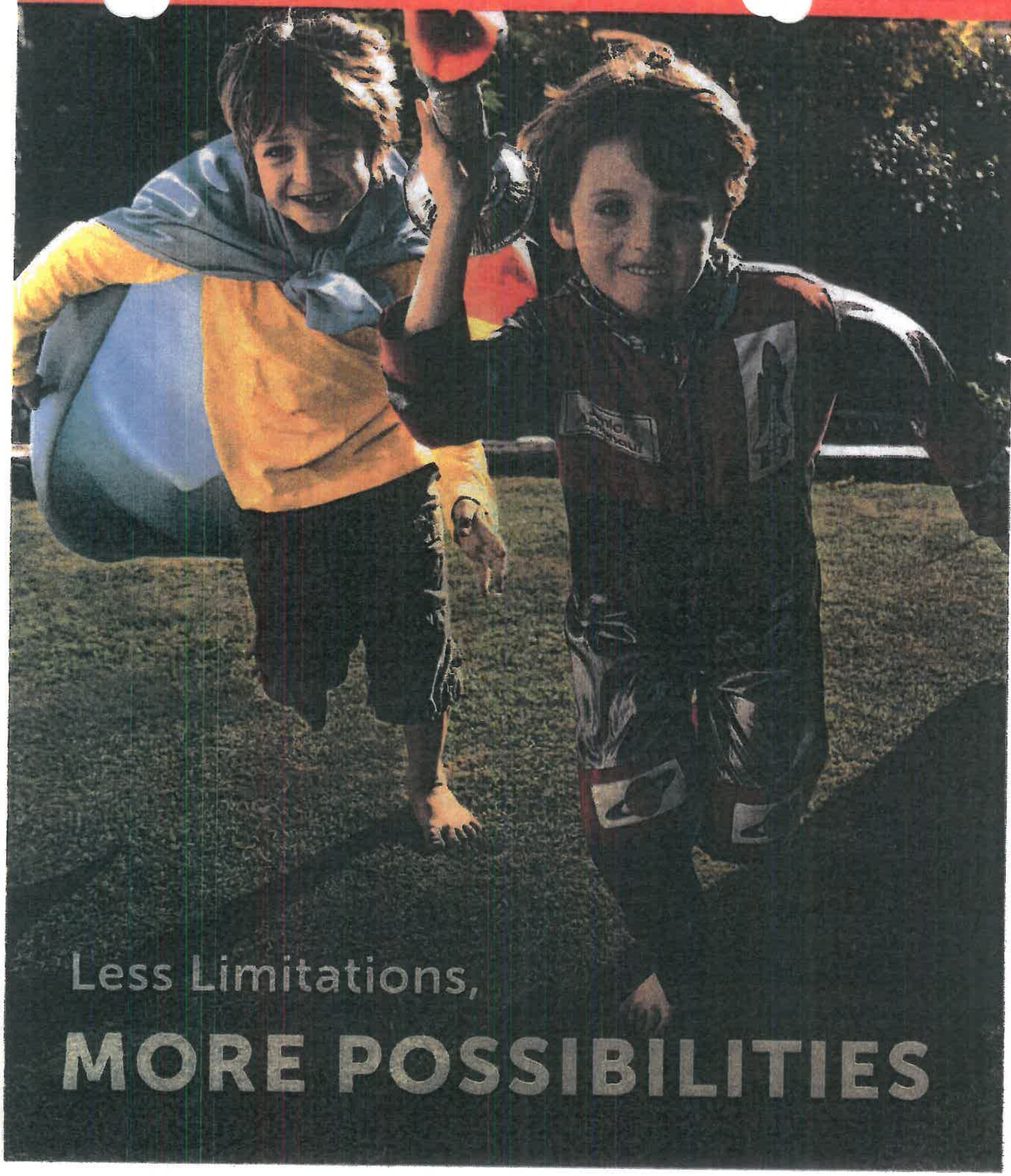
ATTACHMENT – 3

HERO

Program Brochures and/or Information

hero™

Your energy efficient future, today.



Contents:

Why HERO?

HERO is helping communities across California realize the promise of an energy efficient future by making the energy efficient choice the safe and affordable choice for property owners.

Community Impact

When property owners invest in energy efficient upgrades, they do more than save energy. HERO also helps communities create new jobs, save water and increase property values. HERO provides:

Consumer Protection:

Price / Value Confirmation

Pay Upon Job Completion

Dispute Resolution

Economic Stimulus:

Lower Utility Bills

New Job Creation

Increased Property Values

Environmental Benefits:

Reduced CO^2 Emissions

Decreased Energy Consumption

Water Savings

HERO Advantage

When you approve HERO in your community you're protecting consumers before, during and upon completion of every project. Contractors must be in good standing with the Program and are only paid after the job is completed to the consumer's satisfaction.

Consumer Protection		Before HERO	After HERO
Training	Eligibility Requirements Proposal Automation Estimating Calculators Application Verification	✗	✓
Compliance	Marketing Product Eligibility Fair Pricing CSLB Confirmation Permit Verification	✗	✓
Protection	Pay Upon Completion ID Verification Terms Confirmation In Good Standing Dispute Resolution	✗	✓

HERO Features:

- Quality Control
- Approvals Based on Home Equity
- Long-Term Low Fixed Interest Rates

HERO Products:

Over 900,000 models of energy saving products qualify:

- Solar
- HVAC
- Roofing
- Windows
- Artificial Turf
- Pool Pumps
- Water Savings
- Insulation

PACE Track Record

HERO is the largest and most successful residential PACE based financing program in the nation, and the only program that has successfully securitized PACE based loans. All funding, support services and technology are provided at no cost to the municipality.

Our proven model enables us to continue to provide:

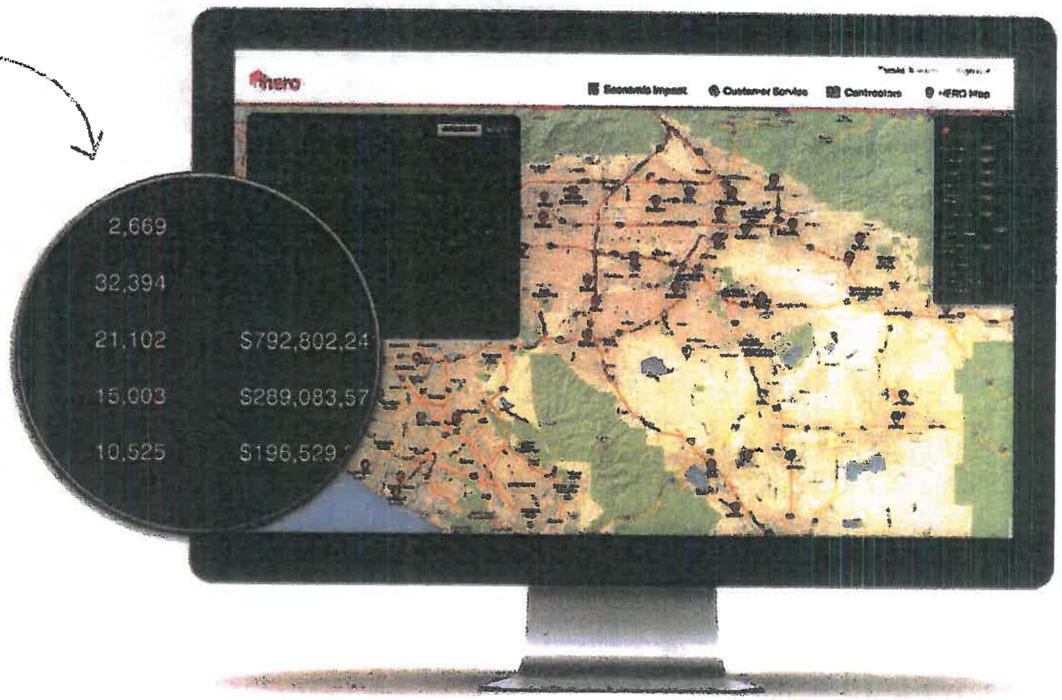
- Ongoing Lending Capital
- Dependable Support Services
- Comprehensive Technology Infrastructure
- Unrivaled Consumer Protections

Integrated Technology

HERO provides communities an extensive technology platform designed to deliver accurate and timely information during every step of the process.

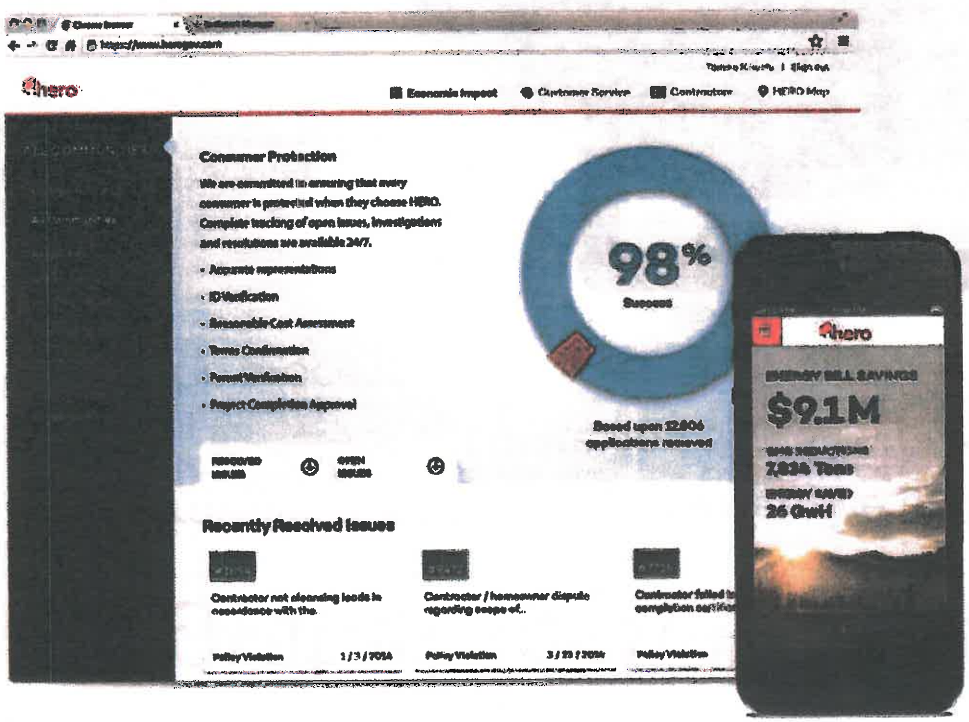
Real-time Tracking:

- Project Types
- Active Contractors
- New Job Creation
- CO² Reduction
- Economic Impact



HERO Gov

HERO Gov provides municipalities direct insight on Program performance and transparency on all consumer protection support items.



Features:

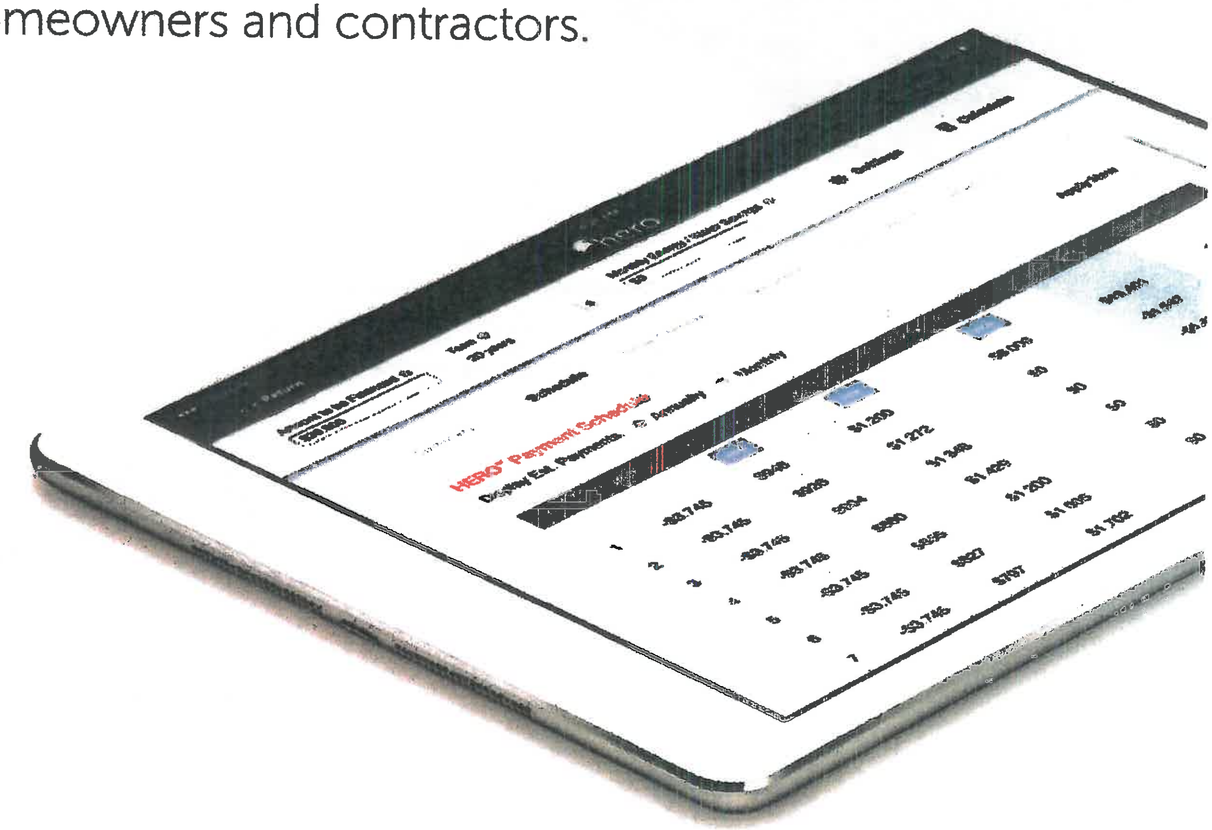
- HERO Map
- Mobile App
- Real Time Data
- Projects Financed
- Amounts Financed
- Environmental Impact
- Jobs Created
- Consumer Protection Inquiries and Resolutions

HERO Pro

An integrated, secure platform designed to make the estimating, approval, documentation and funding process as easy as possible for homeowners and contractors.

Features:

- Interactive Sales Tools
- Estimating Calculators
- Energy Savings Calculators
- Financing Document Generation
- Electronic Signature Capabilities
- Information and Updates
- Web Based Training Curriculum
- Webpage at heroprogram.com/companyname



Community Support

We provide dedicated support to consumers, contractors and municipalities through every step of the process.

Contractor Training

Our representatives in the field deliver training and provide ongoing support for application processing and program implementation.

Municipal Support

Dedicated account managers are assigned to every municipality to provide training, ongoing support, and to respond to any constituent inquiries.

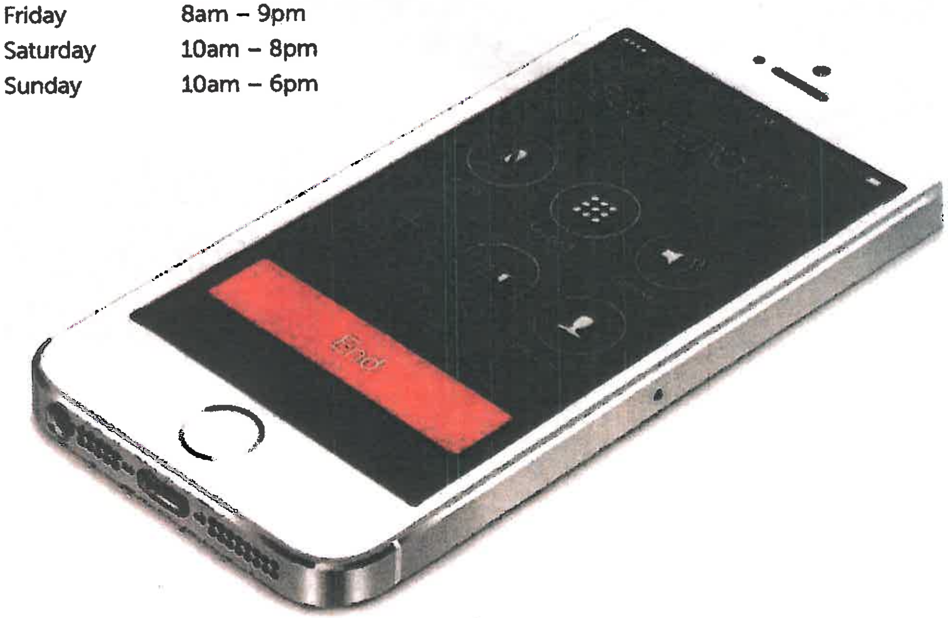
Dispute Resolution

Every consumer complaint receives a full investigation. When necessary, our investigators with law enforcement experience will intervene to resolve any disputes.

HERO Hotline (855-HERO-411)

Our full service call center is available to consumers and contractors from project start to completion.

Mon-Th	8am – 10pm
Friday	8am – 9pm
Saturday	10am – 8pm
Sunday	10am – 6pm



Contractor Training & Registration

The HERO Program provides a comprehensive training program, designed to get contractors comfortable with the all of the financing terms and the property owner approval process.

Training includes:

- Sales Training
- Software Training
- Product Eligibility
- Document Processing
- Completion Certification
- Payment Options
- Co-Marketing Policies
- Brand Usage Guidelines

Consumer Protection Policy

HERO has developed the #1 Consumer Protection Policy in the home energy improvement financing sector.

Contractor ID Verification

Every contractor must be in good standing with the Program, and have active license status with the CSLB.

Pricing Controls

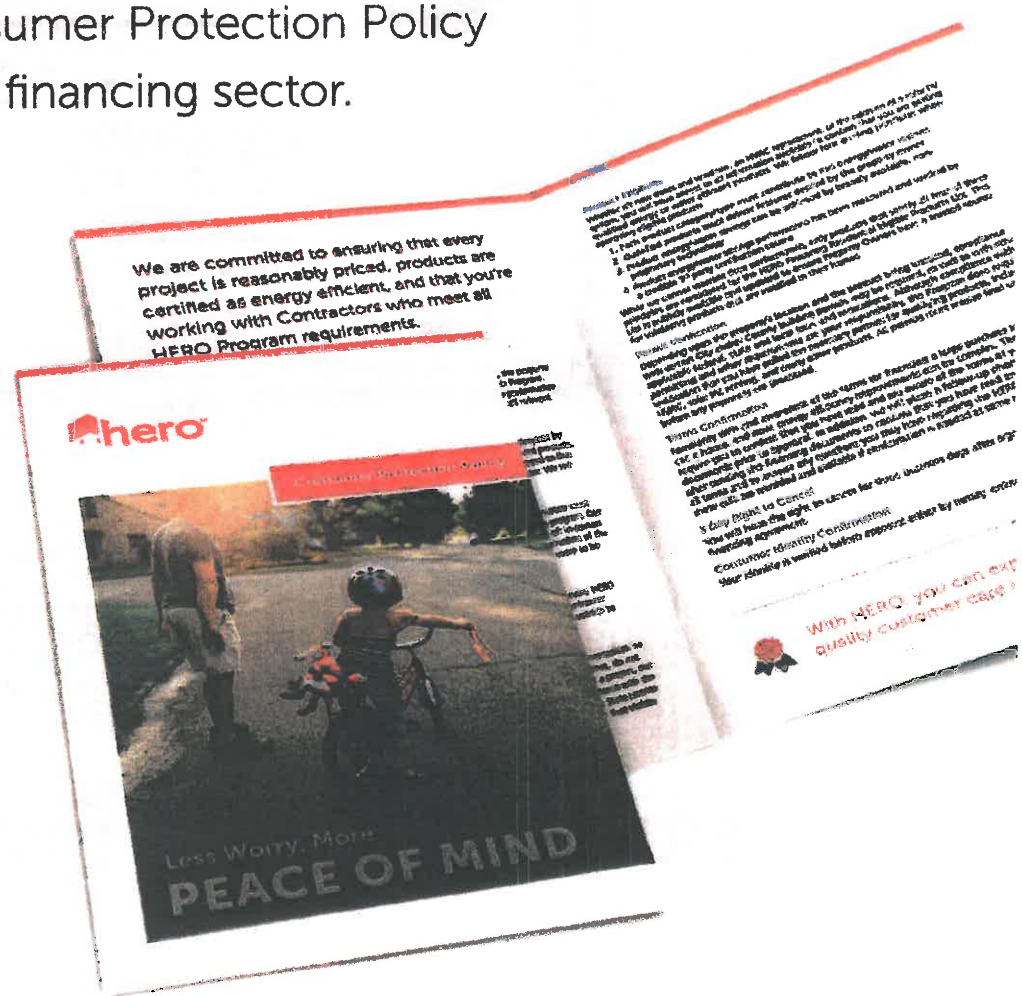
We conduct a Reasonable Cost Test on all major product types and projects to ensure consumers get a fair price.

Permit Verification

We require verification that the necessary permits for qualifying products (including HVAC, solar PV, roofing, and many other products) have been issued.

Payment Protection

No payments are made to the contractor until the property owner signs a completion certificate to verify the project has been completed to their satisfaction.



Awards & Recognition

HERO delivers real impact and has been recognized by industry leaders for excellence and innovation.

ENVIRONMENTAL & ECONOMIC PARTNERSHIP | Governor of California

Awarded California's highest honor by Governor Brown for exceptional leadership in environmental preservation and economic stimulus.

BEST RESIDENTIAL PARTNERSHIP | U.S. Green Building Council

Recognized as a Top 10 Green Building Policy in California, serving as a national model for financing energy efficiency and water conservation retrofits.

BEST OF THE BEST
Urban Land Institute

Recognized for sustainable community development and organizational leadership in providing: economic value, environmental quality, and social equity.

BUSINESS ACHIEVEMENT AWARD
Climate Change Business Journal

Recognized for successfully partnering with local governments to develop residential financing programs for energy efficiency and renewable energy systems.

PRESIDENTS AWARD FOR EXCELLENCE
Southern CA Association of Governments

Recognized for creating successful public-private partnerships and economic stimulus by bringing private funding into communities.

HERO Communities

Fresno County
Fresno
Clovis

Imperial County
Brawley
El Centro

Kern County
Delano
Kern County Unincorporated
Ridgecrest
Taft

Kings County
Lemoore

Los Angeles County
Alhambra
Arcadia
Azusa
Baldwin Park
Bellflower
Bradbury
Carson
City of Industry
Claremont
Covina
Diamond Bar
El Monte
El Segundo
Gardena
Glendora
Hawthorne
Hermosa Beach
Inglewood
Irwindale
La Cañada Flintridge
La Verne
Lawndale
Lomita
Monrovia
Montebello
Monterey Park
Palmdale
Pomona
Rancho Palos Verdes
Rolling Hills
Rolling Hills Estates
Rosemead
San Dimas
San Gabriel
San Marino
Santa Monica
South El Monte
South Pasadena
Temple City
Torrance
Walnut
West Covina

Merced County
Atwater
Merced County Unincorporated

Mono County
Mono County Unincorporated
Mammoth Lakes

Monterey County
Monterey
Monterey County Unincorporated

Napa County
American Canyon
Calistoga
Napa
Napa County Unincorporated
Yountville

Orange County
Anaheim
Brea
Buena Park
Costa Mesa
Garden Grove
Huntington Beach
La Palma
Laguna Hills
Newport Beach
Placentia
Santa Ana
Stanton
Tustin
Westminster

Riverside County
Banning
Calimesa
Canyon Lake
Corona
Eastvale
Hemet
Jurupa Valley
Lake Elsinore
Menifee
Moreno Valley
Murrieta
Norco
Perris
Riverside
Riverside County Unincorporated
San Jacinto
Temecula
Wildomar

Sacramento County
Citrus Heights

San Bernardino County
Adelanto
Apple Valley
Barstow
Big Bear Lake
Chino
Chino Hills
Colton
Fontana
Grand Terrace
Hesperia
Highland
Loma Linda
Montclair
Needles
Ontario
Rancho Cucamonga
Redlands
Rialto
San Bernardino
San Bernardino County Unincorporated
Twentynine Palms
Upland
Victorville
Yucaipa
Yucca Valley

San Diego County
Carlsbad
Escondido
Lemon Grove
Oceanside
San Diego
San Diego County Unincorporated
San Marcos
Solana Beach
Vista

San Joaquin County
Stockton
Tracy

San Mateo County
Menlo Park

Santa Barbara County
Lompoc

Santa Clara County
San Jose

Santa Cruz County
Scotts Valley

Solano County
Solano County Unincorporated
Vacaville

Stanislaus County
Modesto
Newman
Oakdale
Turlock
Waterford

Tulare County
Visalia

HERO Communities as of May 2014

(Italicization indicates pre-launch phase)

Get HERO

It's easy to bring HERO to your community. Learn more by visiting heroprogram.com or calling 855-HERO-411.

1. **Community Adopts HERO**
2. **Judicial Validation is Passed**
3. **Staff are Trained**
4. **Contractors are Trained & Registered**

HERO Launches in Your Community

"Why HERO? It's made our community better by lowering unemployment, increasing environmental efforts, and boosting our economy!"

Mayor Rusty Bailey, Riverside, CA

"As HERO helps our residents lower their utility bills, San José furthers its sustainability goals by reducing energy and water use. Our economy and job market benefits from home improvement-related activity making it a win-win for all aspects of San José."

Kerrie Romanow, Director of Environmental Services, San José, CA

Chat Now Login 855-HERO-411

Home Energy Products HERO Communities Learn More Apply Now

291 HERO Communities

Don't see your community? GET HERO ›

California

* COMING SOON

Alameda County
Albany
Berkeley

Contra Costa County
Antioch *
Brentwood
Concord
Danville *
El Cerrito *
Lafayette *
Martinez *
Oakley
Pittsburg *
Pleasant Hill *
Richmond *
San Pablo
San Ramon
Walnut Creek

El Dorado County
South Lake Tahoe

Fresno County
Clovis
Fresno
Kerman *

Los Angeles County
Alhambra
Arcadia
Artesia *
Avalon *
Azusa
Baldwin Park
Bell Gardens *
Bellflower
Beverly Hills *
Bradbury
Burbank *
Calabasas *
Carson
City of Industry
Claremont
Commerce
Covina
Cudahy *
Culver City *
Diamond Bar
Downey *
Duarte *
El Monte
El Segundo
Gardena
Glendale *

Madera County
Unincorporated Area

Merced County
Atwater
Livingston
Merced
Unincorporated Area

Mono County
Mammoth Lakes
Unincorporated Area

Monterey County
Carmel-by-the-Sea *
Del Rey Oaks *
Monterey
Pacific Grove *
Unincorporated Area

Napa County
American Canyon
Calistoga
Napa
St. Helena
Yountville
Unincorporated Area

Sacramento County
Citrus Heights
Elk Grove *
Rancho Cordova
Unincorporated Area *

San Bernardino County
Adelanto
Apple Valley
Barstow
Big Bear Lake
Chino
Chino Hills
Colton
Fontana
Grand Terrace
Hesperia
Highland
Loma Linda
Montclair
Needles
Ontario
Rancho Cucamonga
Redlands
Rialto
San Bernardino
Twenty Nine Palms

Santa Cruz County
Capitola *
Scotts Valley
Unincorporated Area

Solano County
Benicia
Dixon
Vacaville
Vallejo
Unincorporated Area

Sonoma County
Sebastopol
Sonoma *
Unincorporated Area

Stanislaus County
Hughson
Modesto
Newman
Oakdale
Riverbank
Turlock
Waterford

Tulare County

Kingsburg
Parlier
Reedley
Sanger
Selma
Unincorporated Area

Imperial County
Brawley
Calexico
Calipatria
El Centro
Holtville
Imperial
Unincorporated Area

Kern County
Arvin
Bakersfield
California City
Delano
McFarland
Ridgecrest
Shafter
Taft
Tehachapi
Wasco
Unincorporated Area

Kings County
Lemoore

Glendora
Hawaiian Gardens *
Hawthorne
Hermosa Beach
Hidden Hills *
Huntington Park *
Inglewood
Irwindale
La Canada Flintridge
La Habra Heights *
La Mirada *
La Puente *
La Verne
Lakewood *
Lancaster
Lawndale
Lomita
Long Beach *
Los Angeles *
Lynwood *
Malibu *
Manhattan Beach *
Monrovia
Montebello
Monterey Park
Norwalk *
Palmdale
Palos Verdes Estates *
Paramount *
Pasadena *
Pico Rivera *
Pomona
Rancho Palos Verdes
Redondo Beach
Rolling Hills
Rolling Hills Estates
Rosemead
San Dimas
San Fernando
San Gabriel
San Marino
Santa Clarita *
Santa Fe Springs *
Santa Monica
Sierra Madre
Signal Hill *
South El Monte

Orange County
Aliso Viejo
Anaheim
Brea
Buena Park
Costa Mesa
Cypress
Fountain Valley
Garden Grove
Huntington Beach
La Habra
La Palma
Laguna Hills
Lake Forest
Newport Beach
Placentia
Rancho Santa Margarita
San Clemente
Santa Ana
Stanton
Tustin
Westminster
Yorba Linda *

Riverside County
Banning
Beaumont
Blythe *
Calimesa
Canyon Lake
Cathedral City *
Coachella
Corona
Desert Hot Springs
Eastvale
Hemet
Indian Wells *
Indio
Jurupa Valley
La Quinta *
Lake Elsinore
Menifee
Moreno Valley
Murrieta
Norco
Palm Desert
Palm Springs *

Upland
Victorville
Yucaipa
Yucca Valley
Unincorporated Area

San Diego County
Carlsbad
Coronado
Del Mar *
El Cajon
Encinitas
Escondido
Imperial Beach
La Mesa
Lemon Grove
National City
Oceanside
Poway
San Diego
San Marcos
Santee
Solana Beach
Vista
Unincorporated Area

San Francisco County
San Francisco

San Joaquin County
Lodi
Manteca *
Ripon
Stockton
Tracy

San Mateo County
Daly City
Foster City
Menlo Park
Redwood City
San Bruno
San Carlos *
San Mateo *
South San Francisco *
Woodside

Tulare *
Visalia

Ventura County
Fillmore
Ojai
Oxnard
Port Hueneme
Santa Paula
Simi Valley
Ventura *

Yolo County
Winters *

South Gate *
South Pasadena
Temple City
Torrance
Walnut
West Covina
West Hollywood *
Whittier
Unincorporated Area *

Perris
Rancho Mirage *
Riverside
San Jacinto
Temecula
Wildomar
Unincorporated Area

Unincorporated Area

Santa Barbara County
Lompoc *

Santa Clara County
Gilroy *
Morgan Hill *
San Jose

HERO Footprint & Program Stats

45,000 approved applications for $2.0 Billion

50% California households can participate in the Program - 29 counties, 6.8 Million households

23,000 completed residential projects

$435 Million funded in upgrades

3,700 local jobs created

$760 Million in annual economic impact

44,000 Tons of abated CO_2 emissions

$22 Million in utility bill savings