



**TO THE HONORABLE MAYOR AND CITY COUNCIL:**

DATE: July 22, 2014

**SUBJECT: ADOPT RESOLUTION NOS. 14-57, 14-58, AND 14-59 ALLOWING CALIFORNIA HERO PROGRAM AND FIGTREE FINANCING TO OPERATE IN CONCORD AS PART OF THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

**Report in Brief**

California HERO Program and Figtree Financing are financing agencies that allow residential and commercial property owners to voluntarily finance energy efficiency upgrades. The City of Concord's Economic Development staff has studied the feasibility of authorizing these two programmatic agencies to operate within the City under the State Property Assessed Clean Energy (PACE) program. Providing the PACE program within Concord could bring a number of benefits to property owners who wish to make energy efficient upgrades, and to the City including: full financing of upgrades with no upfront cost, low-cost long-term financing, increase in property values, the creation of new permanent jobs, a reduction in the use of fossil fuels, and various other benefits.

Staff recommends that the Council adopt Resolution No.14-57, which would allow the City of Concord to become a member of the California Enterprise Development Authority (CEDA) and adopt Resolution 14-58 which would allow CEDA to operate the Figtree Financing program in Concord. Staff also recommends that Council adopt Resolution No. 14-59 which would allow the City to participate in the California HERO Program.

**Background**

Assembly Bill (AB) 811, signed into law on July 21, 2008, and AB 474, signed into law January 1, 2010, authorized a legislative body under the PACE program to designate an area within which willing property owners may enter into a voluntary contractual assessment to finance the installation of renewable energy sources, energy efficiency measures, and/or water conservation improvements which are permanently fixed to real property. The contractual assessment is collected by the County tax collector through the property owner's annual property tax bill.

The City of Concord has been invited by Hotel Sustainability Solutions, Inc., a partner of Hilton Concord, to participate in two existing PACE financing programs: the California HERO Program and Figtree Financing. Both agencies use private-sector capital to provide property owners with financing. By joining existing PACE programs, PACE program financing would be offered to all Concord property owners. The

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City would not incur any cost or involvement by offering PACE programs, and there are no administrative responsibilities, marketing obligations, or financial exposure to the City. Joining an existing program simply allows the PACE program to do business in Concord with voluntary property owners. The City may also approve additional PACE programs beyond Figtree Financing and California HERO in the future, in order to foster a competitive PACE marketplace. Other local Cities that are providing PACE financing include Pittsburg (California HERO Program), Dublin (Figtree Financing), Vacaville (California HERO Program), and San Jose (California HERO Program and Figtree Financing).

California HERO Program.

The California HERO Program, founded in 2013, is sponsored by the Western Riverside Council of Governments. It is the largest and most successful privately-funded residential PACE program in the country. To date, 66 California cities, including the Cities of San Jose and Tracy, have joined the California HERO Program and the program has invested \$245 million to fund more than 3,700 projects. The California HERO Program is focused on providing financing to residential property owners.

Figtree Financing.

Founded in 2011, Figtree Financing is sponsored by CEDA. While the California HERO Program primarily finances improvements to residential properties, Figtree Financing concentrates on commercial, industrial, retail, and multi-family properties. To date, 59 communities, including the Cities of Dublin and Pittsburg, have joined Figtree Financing and the program has provided \$1.5 million in PACE financing to California businesses.

Economic Development presented the PACE programs to the Housing and Economic Development Council Committee on June 24, 2014. The Committee approved the item to move forward to the City Council for consideration. The Committee did ask for clarification on the structure of each of these programs, what the potential benefits are for property owners, and what the City's role would be once the programs are in place. Answers to these questions were provided by a representative of the California HERO Program who was in attendance. Answers to these questions are presented in the **Discussion** section of this report.

**Discussion**

The intent of the PACE legislation was to make renewable energy, energy efficiency, water conservation, and electric vehicle charging infrastructure improvements more affordable and promote the installation of those improvements. PACE financing allows residential and commercial property owners to finance 100% of the cost of eligible improvements, such as solar energy systems, Energy Star windows and doors, and high-efficiency air conditioning units, through an assessment on the property that is paid over time through property taxes. Participation in the program is voluntary and only those property owners who wish to participate in the program will pay an assessment through their annual property tax bill.

On July 6, 2010, the Federal Housing Finance Agency (FHFA) issued a directive which was implemented, in part, by Fannie Mae and Freddie Mac, that they would no longer purchase residential

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mortgages with PACE liens. The immediate effect of this directive was the suspension of most municipal and private sector PACE programs throughout California.

FHFA was concerned that liens resulting from PACE residential loans would have priority over Federal Housing Association (FHA) mortgages, meaning that in the case of a default, PACE lenders would be paid off ahead of Fannie Mae and Freddie Mac. To address this concern, in March of 2014, Governor Brown approved a \$10 million loss-reserve program that would be used to reimburse PACE financing agencies in the case of a default. As a result, the PACE program was able to resume its mission of providing financing for energy efficiency projects.

The structure of these programs is as follows: Figtree Financing is offered through CEDA, created by the California Association for Local Economic Development. The California HERO Program is offered through the Western Riverside Council of Governments. Both CEDA and the Western Riverside County of Governments oversee the management and compliance of their respective programs and the City of Concord must be an associate member of each in order to offer their services in Concord. There is no cost or administrative responsibilities on the City's behalf in offering the programs.

**Property owner benefits include:**

- **Access to funds for property improvements:** In today's economic environment, alternatives for property owners to finance renewable energy, energy efficiency, and water conservation improvements may not be available. Therefore, many property owners do not have options available to them to lower their utility bills.
- **Energy and water savings:** Renewable energy, energy efficiency, and water conservation improvements help lower utility bills. In addition, the interest paid may be tax-deductible.
- **Payment obligation is tied to the property:** The debt does not need to be repaid when the property is sold or transferred. The new owner assumes the obligation to repay the remaining balance through their annual property tax bill.
- **Voluntary:** Property owners choose to participate in the program at their own discretion.
- **Repayment obligation matched to the useful life of the financed improvements:** The length of the financing is based on the expected useful life of the improvements. Depending on the lender and the improvements, the term can range from five (5) years to twenty (20) years.
- **Prepayment options:** Property owners can pay off the assessments at any time; however, there may be applicable prepayment penalties, and the program administrators review these terms with prospective participants.
- **Property owners' personal credit is not involved:** The amount financed is based on the assessed value of the subject property and doesn't involve the borrowers' personal credit score.

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Commercial property owners appreciate this type of financing that is only tied to the property and not to the individual or business, financing that doesn't impact their capacity to borrow for other business needs.

- **Increased property values:** More efficient properties are typically worth more and sell more quickly.
- **Improved quality of life:** Residents benefit from improvements, such as more effective cooling provided by new air conditioning units and less outside noise when new double-paned windows are installed.

In addition to helping property owners, these programs also help the City of Concord lower its overall carbon footprint.

Under State legislation, cities can create and offer their own PACE programs directly to property owners. Staff is not aware of any city that has set up its own PACE program. California cities have elected to join established PACE programs. The City may join more than one PACE program in order to provide property owners with the ability to choose the program that best fits their needs.

Staff believes that the City would be best served with offering services from Figtree Financing and the California HERO Program to Concord's property owners. Both have solid reputations and have been approved by numerous California cities. In addition, Hilton Concord has expressed a high-level of interest in the PACE program so that they can continue making sustainable improvements to their property.

Staff has done extensive research on the California HERO Program, Figtree Financing and the PACE program. Background research included contacting other jurisdictions within the State of California that have adopted resolutions authorizing the PACE program to assess their experience with the program and the two financing agencies. All jurisdictions contacted by staff provided positive feedback on both the use of the PACE program and the financing agencies. In addition, the City Attorney's Office has reviewed all program-related documentation and has given full approval to move forward with the program.

The City's role is to adopt the resolutions presented in this staff report. The City would not have any administrative duties associated with offering these programs. If adopted, the City's Economic Development staff would promote the program to interested property owners and businesses to access a financial resource to improve their respective property, increase property values and support sustainable improvements.

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**Fiscal Impact**

There would be no negative fiscal impact to the City by consenting that properties within the City limits can do business with the California HERO Program and Figtree Financing. By offering these services, property owners can access advantageous financing to improve their properties which ultimately would increase property values and create jobs for those trades providing energy efficient services and products.

**Public Contact**

The agenda item was posted. Hilton Concord, Concord Chamber of Commerce, Todos Santos Business Association, Concord Small Business Association, and the Monument Business Network have been notified.

**Recommendation for Action**

Staff is requesting the city Council do the following:

Adopt Resolution No. 14-57 which will allow the City of Concord to become a member of the California Enterprise Development Authority (CEDA).

Adopt Resolution No. 14-58 which will allow CEDA to operate Figtree Financing in Concord.

Adopt Resolution No. 14-59 which will allow the City of Concord to participate in the California HERO Program.

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- Attachment 1—Resolution No. 14-57
- Attachment 2—Resolution No. 14-58
- Attachment 3—Resolution No. 14-59
- Attachment 4—CEDA Membership Agreement
- Attachment 5—Figtree Indemnification Agreement

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**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Approving Associate Membership by  
the City of Concord in the California Enterprise  
Development Authority and Authorizing and  
Directing the Execution of an Associate Membership  
of the City in the Authority**

**Resolution No. 14-57**

**WHEREAS**, the City of Concord, 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; 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, THE CITY COUNCIL OF THE CITY OF CONCORD DOES  
RESOLVE AS FOLLOWS:**

**Section 1.** The City Council hereby specifically finds and declares that the actions authorized

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

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

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

14 **Section 4.** This resolution shall become effective immediately upon its passage and adoption.

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1 **BEFORE THE CITY COUNCIL OF THE**  
2 **CITY OF CONCORD**  
3 **COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

4 **A Resolution Authorizing the City of Concord**  
5 **to join the Figtree PACE Program; Authorizing**  
6 **the California Enterprise Development Authority**  
7 **to Conduct Contractual Assessment Proceedings**  
8 **and Levy Contractual Assessments within the**  
9 **Territory of the City of Concord; and Authorizing**  
10 **Related Actions**

Resolution No. 14-58

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

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

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

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

27 **WHEREAS**, there has been presented to this meeting a proposed form of Resolution of Intention to be  
28 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

1 Figtree PACE which territory shall be coterminous with the City's official boundaries of record at the  
2 time of adoption of the ROI (the "Boundaries"); and

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

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

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

12 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**  
13 **RESOLVE AS FOLLOWS:**

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

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

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

1 will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution

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

- 5 (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in  
6 substantially the form of the ROI;
- 7 (2) The Participating Property Owners, who shall be the legal owners of such property,  
8 voluntarily execute a contract pursuant to Chapter 29 and comply with other applicable  
9 provisions of California law in order to accomplish the valid levy of assessments; and
- 10 (3) The City will not be responsible for the conduct of any assessment proceedings, the levy of  
11 assessments, any required remedial action in the case of delinquencies in such assessment  
12 payments, or the issuance, sale or administration of the Bonds in connection with Figtree  
13 PACE.

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

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

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

1           **Section 8. City Contact Designation.** The appropriate officials and staff of the City are  
 2 hereby authorized and directed to make applications for Figtree PACE available to all property owners  
 3 who wish to finance Improvements. The following staff persons, together with any other staff  
 4 designated by the City Manager from time to time, are hereby designated as the contact persons for  
 5 CEDA in connection with Figtree PACE: Robert Ramirez, Economic Development Specialist, (925)  
 6 671-3048, [Robert.Ramirez@cityofconcord.org](mailto:Robert.Ramirez@cityofconcord.org).

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

11           **Section 10. CEQA.** The City Council hereby finds that adoption of this Resolution is not a  
 12 "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not  
 13 involve any commitment to a specific project which may result in a potentially significant physical  
 14 impact on the environment, as contemplated by Title 14, California Code of Regulations, Section  
 15 15378(b)(4).

16           **Section 11. Effective Date.** This Resolution shall take effect immediately upon its adoption.  
 17 The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to  
 18 Figtree Energy Financing.

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

21           **Section 13.** This resolution shall become effective immediately upon its passage and adoption.

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**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

A Resolution of the City Council of the City of  
Concord Consenting to the Inclusion of Properties  
within the City’s Jurisdiction in the California Hero  
Program to Finance Distributed Generation Renewable  
Energy Sources, Energy and Water Efficiency  
Improvements and Electric Vehicle Charging Infrastructure;  
and Approving the Amendment to a Certain Joint  
Powers Agreement Related Thereto

**Resolution No. 14-59**

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

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

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

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

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

**WHEREAS**, the City wishes to provide innovative solutions to its property owners to achieve energy and water efficiency and independence, and in doing so cooperate with Authority in order to

1 efficiently and economically assist property owners the City in financing such Improvements; and

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

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

14       **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**  
15 **RESOLVE AS FOLLOWS:**

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

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

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

1 represent and be secured by such contractual assessments.

2 **Section 4.** The City Council hereby approved the JPA Amendment and authorizes the  
3 execution thereof by appropriate City officials.

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

7 **Section 6.** This resolution shall become effective immediately upon its passage and adoption.

8 **PASSED AND ADOPTED** by the City Council of the City of Concord on [DATE], by the  
9 following vote:

10 **AYES:** Councilmembers -

11 **NOES:** Councilmembers -

12 **ABSTAIN:** Councilmembers -

13 **ABSENT:** Councilmembers -

14 **I HEREBY CERTIFY** that the foregoing Resolution No. 14-59 as duly and regularly adopted  
15 at a regular meeting of the City Council of the City of Concord on July 22, 2014.

17 \_\_\_\_\_  
18 Mary Rae Lehman, CMC  
19 City Clerk

20 **APPROVED AS TO FORM:**

21 \_\_\_\_\_  
22 Mark S. Coon  
23 City Attorney

24 Attachment: Exhibit A – JPA Amendment  
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**AMENDMENT TO THE JOINT POWERS AGREEMENT  
ADDING CITY OF CONCORD 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 TBD day of \_\_\_\_\_, 2014, by City of Concord (“City”) and the Western Riverside Council of Governments (“Authority”) (collectively the “Parties”).

RECITALS

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

**WHEREAS**, as of October 1, 2012, Authority had 18 member entities (the “Regular Members”); and

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

**WHEREAS**, Authority intends to establish a PACE program to be known as the “California HERO Program” pursuant to Chapter 29 as now enacted or as such legislation may be amended hereafter, which will authorize the implementation of a PACE financing program for cities and county throughout the state; and



1 shall not have any rights otherwise granted to Authority’s Regular Members by the Authority JPA,  
2 including but not limited to the right to vote on matters before the Executive Committee or the  
3 General Assembly, the right to amend or vote on amendments to the Authority JPA, and the right to  
4 sit on committees or boards established under the Authority JPA or by action of the Executive  
5 Committee or the General Assembly, including, without limitation, the General Assembly and the  
6 Executive Committee. City shall not be considered a member for purposes of Section 9.1 of the  
7 Authority JPA.  
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9       3.     **Rights of Authority.** This JPA Amendment shall not be interpreted as limiting or  
10 restricting the rights of Authority under the Authority JPA. Nothing in this JPA Amendment is  
11 intended to alter or modify Authority Transportation Uniform Mitigation Fee (TUMF) Program, the  
12 PACE Program administered by Authority within the jurisdictions of its Regular Members, or any  
13 other programs administered now or in the future by Authority, all as currently structured or  
14 subsequently amended.  
15

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

17       1.     **Boundaries of the California HERO Program within City Jurisdiction.** City shall  
18 determine and notify Authority of the boundaries of the incorporated territory within City’s  
19 jurisdiction within which contractual assessments may be entered into under the California HERO  
20 Program (the “Program Boundaries”), which boundaries may include the entire incorporated territory  
21 of City or a lesser portion thereof.  
22

23       2.     **Determination of Eligible Improvements.** Authority shall determine the types of  
24 distributed generation renewable energy sources, energy efficiency or water conservation  
25 improvements, electric vehicle charging infrastructure or such other improvements as may be  
26 authorized pursuant to Chapter 29 (the “Eligible Improvements”) that will be eligible to be financed  
27 under the California HERO Program.  
28

1           3.     **Establishment of California HERO Program.** Authority will undertake such  
2 proceedings pursuant to Chapter 29 as shall be legally necessary to enable Authority to make  
3 contractual financing of Eligible Improvements available to eligible property owners within the  
4 Program Boundaries.  
5

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

9           5.     **Ongoing Administration.** Authority shall be responsible for the ongoing  
10 administration of the California HERO Program, including but not limited to producing education  
11 plans to raise public awareness of the California HERO Program, soliciting, reviewing and approving  
12 applications from residential and commercial property owners participating in the California HERO  
13 Program, establishing contracts for residential, commercial and other property owners participating in  
14 such program, establishing and collecting assessments due under the California HERO Program,  
15 adopting and implementing any rules or regulations for the California HERO Program, and providing  
16 reports as required by Chapter 29. City will not be responsible for the conduct of any proceedings  
17 required to be taken under Chapter 29; the levy or collection of assessments or any required remedial  
18 action in the case of delinquencies in such assessment payments; or the issuance, sale or  
19 administration of any bonds issued in connection with the California HERO Program.  
20  
21

22           6.     **Phased Implementation.** The Parties recognize and agree that implementation of the  
23 California HERO Program as a whole can and may be phased as additional other cities and counties  
24 execute similar agreements. City entering into this JPA Amendment will obtain the benefits of and  
25 incur the obligations imposed by this JPA Amendment in its jurisdictional area, irrespective of  
26 whether cities or counties enter into similar agreements.  
27

28     C.     **Miscellaneous Provisions.**

1           1.       **Withdrawal.** City or Authority may withdraw from this JPA Amendment upon six (6)  
2 months written notice to the other party; provided, however, there is no outstanding indebtedness of  
3 Authority within City. The provisions of Section 6.2 of the Authority JPA shall not apply to City  
4 under this JPA Amendment. City may withdraw approval for conduct of the HERO Program within  
5 the jurisdictional limits of City upon thirty (30) written notice to WRCOG without liability to the  
6 Authority or any affiliated entity. City withdrawal shall not affect the validity of any voluntary  
7 assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date  
8 of such withdrawal so long as the applications for such voluntary assessment contracts were submitted  
9 to and approved by WRCOG prior to the date of City's notice of withdrawal.  
10

11           2.       **Mutual Indemnification and Liability.** Authority and City shall mutually defend,  
12 indemnify and hold the other party and its directors, officials, officers, employees and agents free and  
13 harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses,  
14 damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, to  
15 the extent arising out of the willful misconduct or negligent acts, errors or omissions of the  
16 indemnifying party or its directors, officials, officers, employees and agents in connection with the  
17 California HERO Program administered under this JPA Amendment, including without limitation the  
18 payment of expert witness fees and attorney fees and other related costs and expenses, but excluding  
19 payment of consequential damages. Without limiting the foregoing, Section 5.2 of the Authority JPA  
20 shall not apply to this JPA Amendment. In no event shall any of Authority's Regular Members or  
21 their officials, officers or employees be held directly liable for any damages or liability resulting out  
22 of this JPA Amendment.  
23  
24

25           3.       **Environmental Review.** Authority shall be the lead agency under the California  
26 Environmental Quality Act for any environmental review that may be required in implementing or  
27 administering the California HERO Program under this JPA Amendment.  
28

1           4.     **Cooperative Effort.** City shall cooperate with Authority by providing information and  
2 other assistance in order for Authority to meet its obligations hereunder. City recognizes that one of  
3 its responsibilities related to the California HERO Program will include any permitting or inspection  
4 requirements as established by City.  
5

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

9 Authority:  
10 Western Riverside Council of Governments  
11 4080 Lemon Street, 3rd Floor. MS1032  
12 Riverside, CA 92501-3609  
Att: Executive Director

13 City: CONCORD  
14

15           6.     **Entire Agreement.** This JPA Amendment, together with the Authority JPA,  
16 constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This JPA  
17 Amendment supersedes any and all other agreements, either oral or in writing, among the Parties with  
18 respect to the subject matter hereof and contains all of the covenants and agreements among them with  
19 respect to said matters, and each Party acknowledges that no representation, inducement, promise of  
20 agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other  
21 Party that is not embodied herein.  
22

23           7.     **Successors and Assigns.** This JPA Amendment and each of its covenants and  
24 conditions shall be binding on and shall inure to the benefit of the Parties and their respective  
25 successors and assigns. A Party may only assign or transfer its rights and obligations under this JPA  
26 Amendment with prior written approval of the other Party, which approval shall not be unreasonably  
27 withheld.  
28

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

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

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

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

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

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

22           14.    **Effective Date.** This JPA Amendment shall become effective upon the execution  
23 thereof by the Parties hereto.  
24  
25  
26  
27  
28

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

3  
4 **WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

5 By: \_\_\_\_\_ Date: \_\_\_\_\_

6 Executive Committee Chair  
7 Western Riverside Council of Governments  
8

9  
10 **CITY OF CONCORD**

11  
12 By: \_\_\_\_\_ Date: \_\_\_\_\_

13 Valerie J. Barone  
14 Title: \_\_\_\_\_  
15 City Manager  
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**ASSOCIATE MEMBERSHIP AGREEMENT**

**by and between the**

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

**and the**

**CITY OF \_\_\_\_\_, CALIFORNIA**

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

**WITNESSETH:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CALIFORNIA ENTERPRISE  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Gurbax Sahota, Chair  
Board of Directors

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mark S. Coon, City Attorney

**CITY OF CONORD, CALIFORNIA**

By: \_\_\_\_\_  
Valerie J. Barone, City Manager

**ATTEST:**

\_\_\_\_\_  
Mary Rae Lehman, City Clerk

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**INDEMNIFICATION AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF CONCORD AND**

**FIGTREE COMPANY, INC.**

This Indemnification Agreement (the “Agreement”) is entered into by and between the City of Concord (the “Public Entity”), a municipal corporation or political subdivision, duly organized and existing under the laws of the State of California and Figtree Company, Inc., a California corporation, the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program (the “Administrator”), which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (the “Authority”).

**RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

If to the Administrator:

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

If to the Public Entity:

City of Concord  
1950 Parkside Drive  
Concord, CA 94519  
Attn: City Manager

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

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

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

APPROVED AS TO FORM:

CITY OF CONCORD

\_\_\_\_\_  
Mark S. Coon  
City Attorney

By \_\_\_\_\_  
Name: Valerie S. Barone  
Title: City Manager  
  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Mary Rae Lehman, CMC  
City Clerk

Figtree Company, Inc., a California corp.

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

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