

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA CONSENTING TO 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, APPROVING AN AMENDMENT TO THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS JOINT POWERS AGREEMENT TO ADD THE CITY AS A MEMBER, AND APPROVING AN INDEMNITY AGREEMENT WITH THE PROGRAM ADMINISTRATOR

WHEREAS, the Western Riverside Council of Governments ("WRCOG") (the "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 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 Part 3 of the Improvement 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, the City of Chula Vista (the "City") is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change; and

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

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

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

WHEREAS, Authority has 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 Agreement Adding the City of Chula Vista 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" to this Resolution, to assist property owners within the jurisdiction of the City in financing the cost of installing Improvements; and

WHEREAS, Pursuant to the JPA Amendment, the Authority agrees to defend and indemnify the City and to conduct the Program in accordance with state and local law, and the City's PACE Program Guidelines; and

WHEREAS, Renovate America, Inc., a Delaware corporation (the "Administrator"), is the administrator of the Authority's California HERO Program, and agrees to fully indemnify the City with respect to the HERO Program, and to administer the Program in accordance with state and local law, and the City's PACE Program Guidelines, pursuant to an indemnification agreement, attached as Exhibit B to this Resolution (the "Indemnification Agreement"); and

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

1. NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista, that: The City Council finds and declares that it is in the City's best interest to allow property owners to choose from multiple PACE programs, such as the California HERO Program, to finance the installation of the Improvements.

2. The City Council consents to inclusion in the California HERO Program of all of the properties in the jurisdictional boundaries of the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with all local and state laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof, provided that

- a. The legal owners of the properties that participate in the HERO Program enter into a contract pursuant to Chapter 29 and comply with all other applicable provisions of California law; and
- b. The City will not be responsible for the conduct of any assessment proceedings, the levy of assessment, 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 HERO Program; and

- c. The Authority and the Administrator will defend and indemnify the City against any actions arising out of the HERO Program, pursuant to the Indemnification Agreement.

3. The consent of the 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 such contractual assessments.

4. The City Council hereby approves the JPA Amendment in the form presented, with such minor modifications as may be required or approved by the City Attorney, a copy of which shall be kept on file in the Office of the City Clerk, and authorizes and directs the Mayor to execute same.

5. The City Council hereby approves the Indemnification Agreement in the form presented, with such minor modifications as may be required or approved by the City Attorney, a copy of which shall be kept on file in the Office of the City Clerk, and authorizes and directs the Mayor to execute same.

6. 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.

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

Presented by

Approved as to form by

Richard A. Hopkins
Director of Public Works

Glen R. Googins
City Attorney

EXHIBIT A

**AMENDMENT TO THE JOINT POWERS AGREEMENT
ADDING CITY OF CHULA VISTA
AS AN ASSOCIATE MEMBER OF THE
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PROPERTY ASSESSED CLEAN
ENERGY (PACE) PROGRAM SERVICES WITHIN SUCH CITY**

This Amendment to the Joint Powers Agreement (“JPA Amendment”) is made and entered into on the [REDACTED] day of [REDACTED], 2015, by City of Chula Vista (“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 Part 3 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 to be 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 under Chapter 29, as it is now enacted or may be 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, as it applies to Associate Members.

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 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. The boundaries within which contractual assessments may be entered into under the California HERO Program (the "Program Boundaries") shall include the entire incorporated territory of City.

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 the 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 within the Program Boundaries.

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. Authority shall administer the HERO Program in a manner that is consistent with state and local law, and the City's PACE Program Guidelines, as such may be amended from time-to-time.

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. Authority may withdraw from this JPA Amendment upon six (6) months written notice to City; 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. Indemnification and Liability. Authority shall defend, indemnify and hold the 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 Authority or its directors, officials, officers, employees or agents in connection with the California HERO Program administered under this JPA Amendment, including without limitation the payment of expert witness fees and attorneys fees and other related costs and expenses, but excluding payment of consequential damages. Without limiting the foregoing, Section 5.2 of the Authority JPA shall not apply to this JPA Amendment. In no event shall any of Authority's Regular Members or their officials, officers or employees be held directly liable for any damages or liability resulting out of this JPA Amendment.

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

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

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

Authority:

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

City:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Director of Public Works

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. Attorneys' Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this JPA Amendment, each Party to the litigation shall bear its own attorneys' 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.

15. Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this JPA Amendment, against City unless a

claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by a Party, the Parties shall meet and confer in good faith for the purpose of resolving any dispute over the terms of this JPA Amendment.

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

[SIGNATURES ON FOLLOWING PAGES]

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: _____
Executive Committee Chair
Western Riverside Council of Governments

Date: _____

CITY OF CHULA VISTA

By: _____
Mary Casillas Salas, Mayor

Date: _____

Attest:

Donna Norris, City Clerk

Approved as to form:

Glen R. Googins, City Attorney