

**DATE:** October 28, 2014

**TO:** City Council

**FROM:** Director of Utilities & Environmental Services

**SUBJECT:** Approval of Resolutions to Authorize the Figtree Property Assessed Clean Energy (PACE) Program to Serve Commercial Property Owners in Hayward

### **RECOMMENDATION**

That the City Council approves the attached two resolutions, which authorize the City Manager to execute agreements to join the California Enterprise Development Authority and the Figtree Property Assessed Clean Energy (PACE) program for commercial properties.

### **BACKGROUND**

The California Streets and Highways Code authorizes cities and counties to form assessment districts to finance certain public improvements. Money is borrowed to pay for the improvements and the debt is paid off by the district's property owners through annual installments on their property tax bill. PACE programs use these types of districts to finance energy and water efficiency improvements. California AB 811 (July 21, 2008) amended the Streets and Highways Code to include the installation of renewable energy sources and energy efficiency upgrades as allowable public improvements. California AB 474 (January 1, 2010) expanded AB 811 to also make water efficiency improvements eligible for PACE financing.

The intent of the PACE legislation is to provide an additional means of financing to make energy and water efficiency improvements and renewable energy systems more affordable and accessible to property owners. PACE financing differs from other financing mechanisms because it allows property owners to finance 100% of the cost of eligible improvements, it does not involve the property owners' personal credit because it is based on the assessed value of the property, and it spreads the cost over a longer period of time, usually up to twenty years. Hayward's General Plan, adopted earlier this year, calls for the development of financing programs for energy efficiency retrofits and for installation of renewable energy systems for single-family residential, multi-family, and commercial properties (Programs NR-9, NR-10, NR-12, and NR-13).

When a governmental entity authorizes a PACE district, it must create a report that includes the boundaries of the district, eligible efficiency improvements, a method for prioritizing applications, and a plan for raising capital. PACE programs may use capital available from any source, including the sale of bonds. Participation in a PACE program is voluntary and only those property owners

who wish to participate pay an assessment. If a property owner participating in a PACE program sells the property, then the repayment obligation legally transfers with the property to the next owner.

Some local jurisdictions in California have created their own PACE districts and programs, and others have chosen to join a joint powers authority (JPA) that has established a PACE program. On January 5, 2010<sup>1</sup>, the Hayward City Council voted to join the CaliforniaFIRST PACE Program, which is sponsored by the California Statewide Communities Development Authority JPA. CaliforniaFIRST launched its non-residential program in September 2012 with fourteen counties and more than 120 cities participating in California. To date, there have been eighty applications for non-residential projects totaling over \$43 million throughout California. Of these, sixteen are in Alameda County (totaling approximately \$13 million) and two (totaling approximately \$600,000) are in Hayward.

*Residential PACE* – Until recently, most PACE programs had put their residential activities on hold in response to opposition from the Federal Housing Finance Agency (FHFA). PACE assessments are designed to be senior to a mortgage, meaning that upon a foreclosure or forced sale, the assessment would be paid off prior to the mortgage. Because of this, the FHFA argued that PACE was too risky for lenders to support and, in July 2010, instructed Fannie Mae and Freddie Mac to stop underwriting mortgages for customers with PACE assessments. Since 2010, the State of California has made various attempts to influence the FHFA’s position, including a failed lawsuit and the creation of a \$10 million loan-loss reserve to pay back lenders in case a homeowner defaulted. On May 1, 2014, the FHFA wrote a letter to California officials stating that the reserve fund did not sufficiently address the risks to lenders and that the Agency would not change its policy on PACE.

Despite the FHFA’s firm stance, it has not taken enforcement action against participating jurisdictions or property owners. Furthermore, some residential programs have continued to operate over the past three years and have not experienced the increase in mortgage default rates that the Federal Agency feared. These factors have encouraged residential PACE programs in California and elsewhere to restart activities. CaliforniaFIRST re-launched its residential program<sup>2</sup> in August 2014. Because the City Council previously authorized CaliforniaFIRST to operate in Hayward, this program is now available to Hayward homeowners.

## **DISCUSSION**

*Benefits and Risks of Opening the Market of PACE Financing* – There are now thirty-one states that have passed legislation supporting PACE financing, thirteen of which have active programs. Of these thirteen, only seven have more than one PACE program operating in the state. California is leading the way, with approximately ten active programs. As the number of programs grows, this has sparked a discussion about the merits of authorizing multiple PACE programs to operate in a single jurisdiction. Some advocacy groups, including PACENow, support an “open market” for

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<sup>1</sup> <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/rp/2010/rp010510-07.pdf>

<sup>2</sup> <https://californiafirst.org/>

PACE providers, claiming that competition helps build a stronger PACE industry landscape and provides property owners more choices.

A handful of cities have recently adopted this approach. For example San Jose, which had previously approved CaliforniaFIRST, approved the Figtree PACE and HERO Financing programs in December 2013. HERO (Home Energy Renovation Opportunity) was launched in 2011 by the Western Riverside Council of Governments, and has since expanded to be available for commercial and residential properties throughout California. Figtree PACE is described below. The presence of multiple PACE programs operating in the same market is a relatively new occurrence and there is little data available to support claims of benefits.

JPA-sponsored PACE programs like CaliforniaFIRST and Figtree generally offer little risk to local jurisdictions. The JPAs offering these programs assume the legal liability, providing legal protection to the City. Any bonds issued to finance projects are issued by the JPA, so the City has no obligation to the bonds.

However, as with most financing mechanisms, PACE programs can present risks to consumers. With enough information, savvy property owners should be able to assess if PACE financing is a wise long-term investment for their particular circumstance. However, as seen in the 2008 mortgage crisis, property owners don't always have the knowledge needed to make well-informed financing decisions. The PACE model differs from other types of government assessment districts, such as lighting or fire districts, because it is optional for each individual property owner. This raises a potential concern that some PACE providers will use aggressive marketing tactics to convince property owners to use their product when it may not be in the owner's best long-term interest.

If administered appropriately, PACE programs can save property owners money in the long-run through efficiency upgrades. However, if administered inappropriately, property owners could end up owing more than they save. This is especially a concern in the residential market. As a group, commercial property owners are considered to be generally more savvy than residential owners about financing decisions because it is part of their job.

PACE financing presents further complications for homeowners with Fannie Mae and Freddie Mac mortgages. It's not illegal for these homeowners to participate in the program, but they may be required to pay off the loan first if they want to sell their home or refinance their mortgage. The Sonoma County Energy Independence Program, which has been providing PACE financing for residential properties since 2009, has found that many homeowners are able to carry their PACE lien through a refinance, but only some have been able to do so when they sell their home. It is important that these homeowners understand these implications before entering into a PACE assessment.

*Figtree PACE Financing* – Currently, CaliforniaFIRST is the only PACE program that the City of Hayward has authorized. At its January 29 meeting<sup>3</sup>, the Sustainability Committee considered the Figtree PACE Program and recommended that the City Council approve the City's participation in

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<sup>3</sup> See Item #4: <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2014/CSC-CCSC012914full.pdf>

the Program, which would make it the second PACE Program authorized to operate in Hayward. While preparing to present the program to Council, staff reviewed Figtree's Program Report, which Council would need to adopt to join the Program. This review raised some concerns, which staff presented to the Committee at its September 11 meeting<sup>4</sup>. At that meeting, the Committee reaffirmed its recommendation that the City Council join the Figtree Program, but recommended that Figtree's authority be limited to commercial properties only.

Founded in 2011, the Figtree PACE program is sponsored by the California Enterprise Development Authority (CEDA), a joint powers authority. Since the City is not an associate member of CEDA, Council would need to approve a resolution to become an associate member. There is no cost or liability associated with becoming a member of CEDA. Figtree is currently available in forty-nine cities and unincorporated areas in California, including Dublin and unincorporated Alameda County. Some other cities in Alameda County have considered participating in Figtree PACE, but have not done so because they have not had interested property owners. Currently, Figtree's focus is on non-residential properties, though it also offers financing to residential properties that either do not have a mortgage lien or have a non-FHFA mortgage. To date, Figtree has provided \$1.5 million in PACE financing to California businesses. Figtree is planning to launch a full residential program in early 2015.

The primary concern related to the Figtree Program is their use of accelerated foreclosure, which gives property owners less time to remedy a default. Accelerated foreclosure is authorized by state law and allows the program to recover delinquent assessments in a faster timeframe than the regular foreclosure process. Regular foreclosures usually take a few years, whereas accelerated foreclosures can take less than a year. Property owners participating in the Figtree program would receive a notice of default after their second missed payment, and the foreclosure sale can occur approximately eight months after the notice.

In contrast to Figtree, CaliforniaFIRST uses judicial foreclosure as their means of recovering delinquent assessments. Judicial foreclosure generally provides more protection for the property owner because it requires the lender to file a lawsuit and involves a judge.

For reasons mentioned above, accelerated foreclosure will become a greater concern when Figtree expands its services to include residential properties. If Council approves the full Figtree Program at this time, then Figtree could begin serving the residential sector in the future without further Council action. For this reason, the Sustainability Committee recommended that restrictive language be added to the adopting resolutions to limit Figtree's authority to commercial properties only. The attached resolutions include this restrictive language.

To join the Figtree program, Council would need to adopt one resolution to join CEDA (Attachment I) and another resolution to opt into the Alameda County Figtree PACE assessment district (Attachment II). When Alameda County approved participation in Figtree in 2012, the Board of Supervisors established an assessment district for all of Alameda County. These actions will not expose the City to financial or other liability.

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<sup>4</sup> See Item #4: <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2014/CSC-CCSC091114full.pdf>

The second resolution includes Council's approval of the Program Report that has been approved by the CEDA Board of Directors. The Program Report is a 107-page document describing the program, eligible projects, requirements for contractors, boundary maps for all participating jurisdictions, and program application forms. The full Program Report is available in the City Clerk's office. Staff reviewed the Program Report and recommends that Council approve the document for commercial properties.

## **ECONOMIC IMPACT**

The existence of these two PACE programs in Hayward continues to signal to the outside world that Hayward is innovative and on the forefront of addressing environmental issues. Expanding PACE accessibility to commercial properties also assists our business community in meeting environmental goals within an affordable financing structure; and makes Hayward more attractive to new businesses.

Both CaliforniaFIRST and Figtree have similar potential benefits to property owners, including an alternative method for owners to finance energy and water efficiency retrofits and renewable energy systems and to realize the energy cost savings related to them. If Hayward experiences high participation from property owners, local green jobs may be created to complete these energy and water improvements.

Figtree is currently attracting investment. In March 2014, it partnered with a New York-based financial institution for up to \$60 million in capital. Upon Council adoption of the attached resolutions, commercial property owners in Hayward will have access to Figtree financing. However, it is unclear if there is a demand from Hayward property owners for additional financing. So far, there have only been two commercial PACE projects in Hayward, both of which CaliforniaFIRST was able to finance. In March, CaliforniaFIRST raised \$20 million in venture capital and in May, it secured a \$300 million credit facility.

As mentioned above, there are also potential economic risks to property owners when they take on PACE financing. In the worst case, cost savings may not materialize as predicted, and the owners could end up owing more than they can afford. This could result in increased defaults in Hayward. However, at this time, staff is recommending Council authorization for commercial properties only.

## **FISCAL IMPACT**

Participation in the Figtree PACE program will not impact the General Fund or any City funds. PACE programs use private sector capital to provide property owners with funding. The City will not incur any cost or involvement and there is no administrative responsibility, marketing obligations, or financial exposure to the City. CEDA, Figtree, and the City will execute an Indemnification Agreement releasing the City of all financial and legal liability related to Figtree's administration of the Figtree PACE program. The City Attorney's office reviewed the draft agreement and recommends that Council authorize its execution. Additionally, the Joint Powers Agreement that established CEDA provides that the liabilities and obligations of the JPA remain with the JPA and are not incurred by the individual members.

## **PUBLIC CONTACT**

Staff is aware of one Hayward property owner interested in participating in the Figtree program. A letter from the owner (Attachment III) and an email from the contractor (Attachment IV) were received supporting Council's adoption of the program. The letter and email were provided to the Sustainability Committee on September 11, 2014.

## **NEXT STEPS**

Upon Council's adoption of the attached resolutions, staff will execute the agreements and work with Figtree and CEDA to ensure that the Figtree program is available to Hayward commercial property owners. If Council decides to make Figtree available to single-family residential property owners, staff would provide revised resolutions at a later meeting.

*Prepared by:* Mary Thomas, Administrative Analyst I

*Recommended by:* Alex Ameri, Director of Utilities & Environmental Services

Approved by:



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Fran David, City Manager

### Attachments:

Attachment I	Resolution Approving Associate Membership in CEDA
Attachment I-a	Associate Membership Agreement in CEDA
Attachment II	Resolution to Opt into PACE
Attachment III	Letter from International Manufacturing
Attachment IV	Email from Wipomo

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member \_\_\_\_\_

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

**WHEREAS**, the City of Hayward, 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, BE IT RESOLVED**, that the City Council of the City of Hayward, hereby finds, determines and declares 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 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.** This resolution shall take effect immediately upon its passage.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**ASSOCIATE MEMBERSHIP AGREEMENT**

**by and between the**

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

**and the**

**CITY OF HAYWARD, 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 HAYWARD, CALIFORNIA, a municipal corporation, duly organized and existing under the laws of the State of California (the “City”);

**WITNESSETH:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CALIFORNIA ENTERPRISE  
DEVELOPMENT AUTHORITY**

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

Attest:

\_\_\_\_\_  
Michelle Stephens, Asst. Secretary

**CITY OF HAYWARD, CALIFORNIA**

By: \_\_\_\_\_  
Barbara Halliday, Mayor  
City Council

Attest:

\_\_\_\_\_  
Miriam Lens  
City Clerk

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD, STATE OF CALIFORNIA, CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE INCORPORATED AREA OF THE CITY IN THE ALAMEDA COUNTY PROPERTY ASSESSED CLEAN ENERGY PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS, APPROVING THE REPORT SETTING FORTH THE PARAMETERS OF THE REFERENCED PROGRAM AND CERTAIN MATTERS IN CONNECTION THEREWITH**

**RECITALS:**

**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 Hayward (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 Board of Supervisors (the "Board of Supervisors") of the County of Alameda, a political subdivision of the State of California (the "County"), has adopted Figtree PACE pursuant to the Act; and

**WHEREAS**, the parameters of Figtree PACE are set forth in the Program Report and such Report has been prepared pursuant to Section 5898.22 of the Act and approved by the CEDA Board of Directors; and

**WHEREAS**, with the assistance of the City’s staff, the City Council of the City of Hayward (the “City Council”) has reviewed the Program Report;

**WHEREAS**, the Act authorizes CEDA to enter into contractual assessments with non-residential property owners located within incorporated cities in the County of Alameda upon the approval of the legislative body of the related city to participate in Figtree PACE; and

**WHEREAS**, the City of Hayward (the “City”) desires to participate with the County in Figtree PACE, and provide for participation in Figtree PACE by non-residential property owners located within City limits; and

**WHEREAS**, pursuant to Chapter 29, the City authorizes CEDA to 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, Figtree Energy Financing, the program administrator, has agreed to defend and indemnify the City; and

**WHEREAS**, the Figtree PACE program shall only be available to commercial, industrial, and agricultural property within the Proposed Boundaries including multifamily property with five units or more; and

**WHEREAS**, the City will not be responsible for 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 Hayward 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. Resolution of Intention.** The City Council ratifies the resolution adopted by the CEDA Board of Directors on April 26, 2012 declaring the Board’s intention to order the implementation of a contractual assessment program. In making this ratification, it is the City’s intention to only authorize contractual assessments pursuant to the Act on commercial, industrial,

and agricultural property within the Proposed Boundaries including multifamily property with five units or more.

**Section 4. Boundaries.** The City Council hereby approves the inclusion in Figtree PACE all of the properties in the incorporated area within the City, as same may be amended through annexation from time to time, the acquisition, construction and installation within City limits of the energy and water efficiency measures set forth in the Report upon the request and agreement of the affected property owner, and the assumption of jurisdiction thereof by CEDA for the aforesaid purposes. The adoption of this Resolution by this City Council constitutes the approval by the City to participate in Figtree PACE. This City Council further authorizes CEDA to set the terms of, and implement, Figtree PACE and take each and every action necessary or desirable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance of bonds, notes or other forms of indebtedness secured by such contractual assessments as authorized by Chapter 29.

**Section 5. 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 6. 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 7. 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 8. Indemnification.** The City Council acknowledges that Figtree has provided the City with an indemnification agreement, as shown in 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 9. 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 non-

residential property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Manager from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: Erik Pearson, Environmental Services Manager; phone: 510-583-4770; email: [erik.pearson@hayward-ca.gov](mailto:erik.pearson@hayward-ca.gov) .The City Clerk is directed to provide a certified copy of this Resolution to Figtree Energy Financing.

**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 immediately upon its adoption. 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.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**INTERNATIONAL MANUFACTURING**  
CNC PRECISION MACHINE SHOP                      ISO-COMPLIANT

January 24, 2014

Hayward City Council/Hayward Sustainability Committee  
& Public Works-Utilities & Environmental Services  
City Hall  
777 B Street  
Hayward, CA 94541

Attention: Erik J Pearson, AICP/ Hayward City Council

I am the present owner of International Manufacturing, a small CNC precision machine shop in Hayward, CA. This business was built at this location over thirty years ago for Mr. Johnson Chiang and was purchased by me in 2005.

I understand that the City of Hayward will soon decide the future of the Property Assessed Clean Energy (PACE) financing. I urge the Council Sustainability Committee to recommend that the City Council adopt the Figtree PACE program.

Each year brings large increases in the cost of doing business; sometimes as much as 20%. With stiff competition, especially overseas, our company is exploring methods of reducing costs. This energy efficient retrofit proposed by Wipomo with proposed financing through PACE-Figtree is ideal.

This financing allows IMI to save or fix energy cost in the future, enjoy state and federal tax rebates, ensure greater profitability, and ultimately enjoy a tremendous increase in the value of the property. These results benefit everyone: IMI, the City of Hayward and Alameda County.

I urge you to allow this “cutting-edge” financing proposal to happen.

Sincerely,

  
Clement C. Johnson, III    President

1745 Addison Way    Hayward, CA 94544    P 510.783.8872    F 510.783.1430

**Erik Pearson**

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**From:** Charlie Johnson <charlie@wipomo.com>  
**Sent:** Wednesday, January 22, 2014 9:13 AM  
**To:** Erik Pearson  
**Cc:** Joe Flores; cchapin@figtreefinancing.com  
**Subject:** Figtree PACE Program | City of Hayward

Mr. Erik Pearson,

My name is Charlie Johnson, founder of Wipomo. As you are aware, Wipomo has been working closely with Figtree PACE (Property Assessed Clean Energy) Financing to bring Figtree PACE to the City of Hayward. The reason for this email today is to provide additional support to the Council Sustainability Committee as they review the Figtree PACE Program on the 29th of January.

I am urging the committee to recommend City Council adopt the Figtree PACE Program. I have a project in the City of Hayward that would immediately benefit by using Figtree PACE to finance the project. Without this funding, the energy efficiency retrofit will not be possible and the property owner will not realize the energy savings.

The County of Alameda has already adopted the Figtree PACE Program as well as numerous other cities throughout the state, including the City of San Jose, San Diego, Fresno and many others. A complete list of Participating Cities can be found at the bottom of the page on the following link:

<http://www.figtreefinancing.com/government-member-agencies/>

The Figtree PACE Program can create jobs and has already funded projects in other cities. For the news release on Figtree's latest bond issue for solar and roofing projects in Fresno, Bakersfield, and Chico, click here:

<http://info.figtreefinancing.com/e/28222/es-third-bond-just-3-months-af/wvhqm/503773218>

<http://nreionline.com/nreiwire/press-release-commercial-pace-provider-figtree-financing-issues-third-bond-just-3-months-af>

The Figtree PACE Program will allow property owners in the City of Hayward access to capital for financing energy efficiency, renewable energy, and water conservation improvements on commercial and industrial properties and pay for those costs through their annual property tax bill as a line item.

There's no financial impact to the city's General Fund, no legal liability and no upfront costs to owners who choose to make these improvements.

Upgrades to windows and doors, lighting, refrigeration, bathrooms, solar photovoltaic and water, and HVAC are some of the projects eligible for financing

During a time when many contractors are struggling to find ways to increase cash flow, the City of Hayward has an opportunity to offer this important economic development tool at no cost to the City. In addition to helping the business community, retrofitting the commercial and industrial building stock has the potential of directly assisting the local construction industry - one of the industries hardest hit by the economic downturn.

Please contact Joe Flores, Figtree's Vice President of Municipal Finance directly at (858) 771-0895 or via email: [jflores@figtreefinancing.com](mailto:jflores@figtreefinancing.com) for additional details.

You can reach me at: 760-809-3391 or via email at [charlie@wipomo.com](mailto:charlie@wipomo.com).

Thank you,  
-Charlie

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Charlie Q. Johnson  
Founder - CEO, Wipomo  
760-809-3391  
[charlie@wipomo.com](mailto:charlie@wipomo.com)

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Wipomo's "Energy Ecosystem" puts you "On the Road to Energy Independence".