

CITY COUNCIL AGENDA: AUGUST 5, 2014

PUBLIC HEARING

SUBJECT: PROPERTY ASSESSED CLEAN ENERGY PROGRAM

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: In July 2008, California Assembly Bill 811, known as Property Assessed Clean Energy (PACE), was signed into law. PACE allows public agencies (cities, counties or special districts, including joint powers within the State of California) to voluntarily place contractual assessments, secured by a property lien, on private property. The PACE program provides financing to private property owners for the initial costs of the purchase and installation of renewable energy, energy efficiency, and water efficiency improvements to their property over the estimated life of the improvement. The PACE assessment is included as a special assessment on the property tax bill of the participating property owner. The obligation of the PACE Bond transfers with the transfer of ownership of the property, but is not accelerated by the sale or default of a property.

On September 10, 2013, Tulare County established the Tulare County PACE Program. The Tulare County PACE Program was formed with Structured Finance Associates, California Municipal Finance Authority, Jones Hall, Goodwin Consulting Group Inc., and ReNewAll. Structured Finance currently provides PACE financing throughout California as a participant in the California First program and a direct participant in the County of San Francisco, Los Angeles County and Tulare County PACE programs.

The draft resolution authorizes property owners within the City of Porterville the ability to participate in the Tulare County PACE Program. The Tulare County PACE Program provides financing to commercial, multi-family (with five or more units), industrial, and agricultural properties wishing to upgrade their properties. In addition to adopting the resolution opting into the Tulare County PACE Program, the City of Porterville would also be required to adopt a resolution joining the California Municipal Finance Authority (CMFA) and sign a Joint Exercise Power Agreement with the CMFA for property owners to be able to participate in the PACE program. The CMFA serves as the bond issuer for the PACE Program. There is no cost to join the CMFA.

The PACE Program functions with a bond being issued through the CMFA for each PACE project. The financing goes directly to the property owner, allowing the property owner to select the contractor of their choice. The City of Porterville would not be involved in the assessment, receipt or transfer of the assessment funds and will have no obligation with respect to the repayment of the bonds created by the PACE program. The goal of the program is to promote economic growth and job creation in the City of Porterville by allowing businesses an

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additional financing tool to lower their operating costs by decreasing energy and water consumption.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution to become a member of the California Municipal Finance Authority, and authorize the mayor to sign the Joint Exercise of Powers Agreement relating to the California Municipal Finance Authority.
2. Adopt the draft resolution opting into the Tulare County PACE Program.

ATTACHMENTS:

1. Structured Finance PACE Program presentation
2. Draft resolution to join California Municipal Finance Authority
3. Joint Exercise of Powers Agreement California Municipal Finance Authority
4. Draft resolution to opt into Tulare County PACE Program

Commercial Property PACE Program

ATTACHMENT
ITEM NO. |

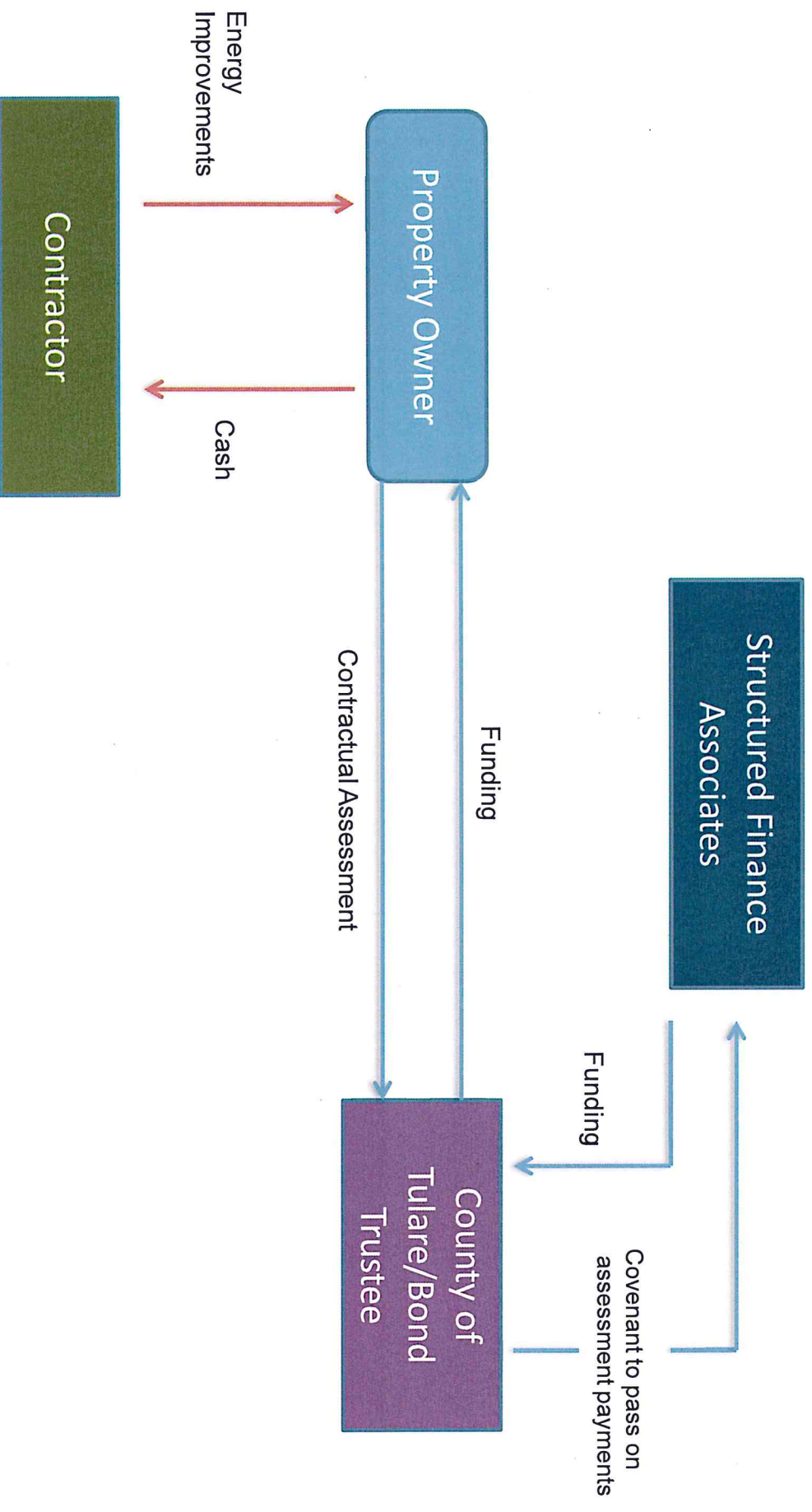
Description of PACE

- PACE – Property Assessed Clean Energy
- Signed into law in July 2008
- Provides for Tulare County to act as a conduit to encourage the installation of energy efficiency and renewable energy on commercial properties.
- The City of Porterville has no obligation with respect to payment (or nonpayment) of the Bonds whatsoever.
- The City of Porterville is never involved in the assessment, receipt and or transfer of the assessment payments/funds.

Description of PACE

- Each “loan” is in the form of a mini-municipal bond; similar to a Mello-Roos assessment
- PACE is a modification of assessment bond financing law which has been in effect since early 1900's
- Commercial PACE not affected by recent FHFA announcements

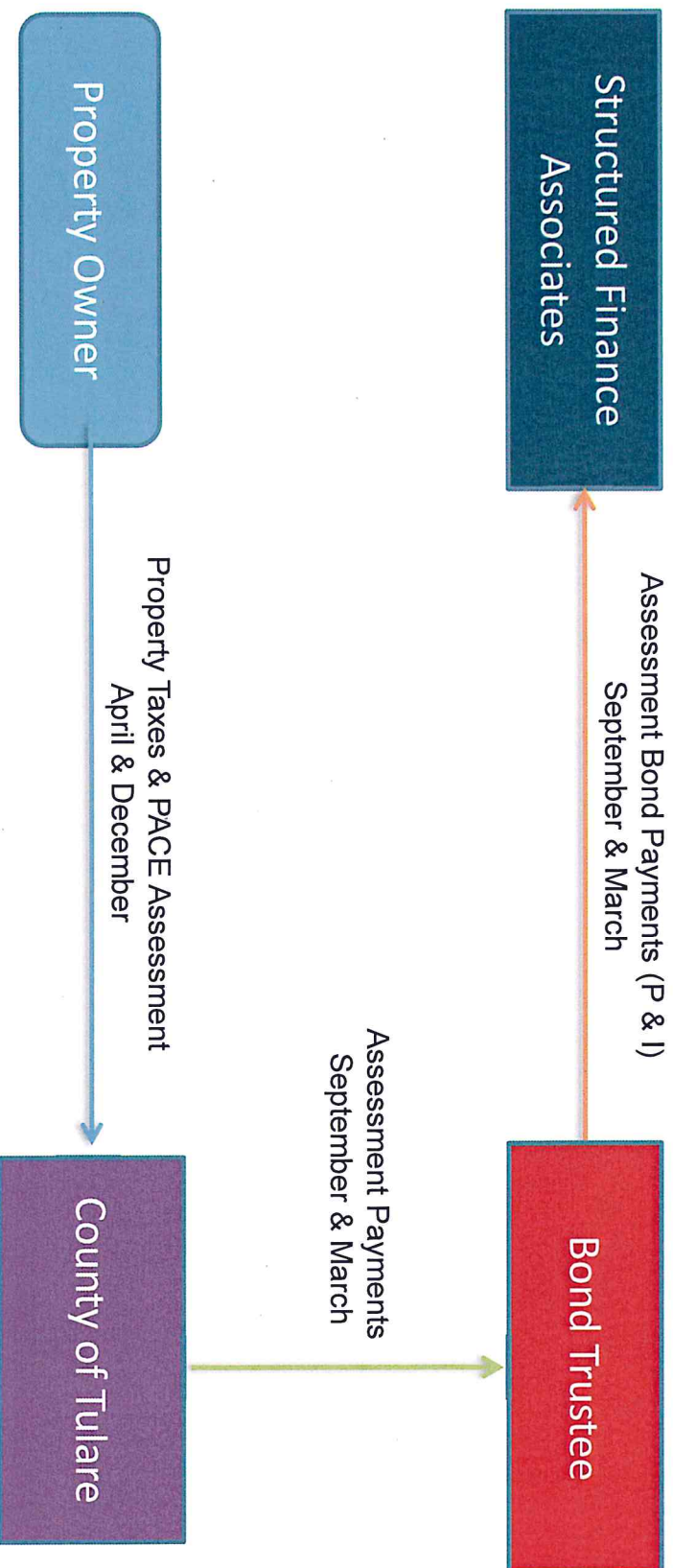
PACE Assessment #1



PACE Assessment #1

- Structured Finance purchases the assessment bond
- In return, the County of Tulare covenants to pass the payments on the taxes, assessment payments, to the Bond Holder.
- The proceeds are used by the Property Owner to purchase the energy efficiency and/or other energy generation improvements from the contractor.

PACE Assessment #2



PACE Assessment #2

- Each April and December the property owner pays their property taxes. These taxes include the PACE assessment.
- The County of Tulare passes the amount due on the PACE bonds every March, (The previous December's payment), and September, (The previous April's payment), to the Bond Trustee.
- The Bond Trustee passes the payment(s) on to the Structured Finance.

Additional Information

Interest and Principal Payments

- Interest received on the bonds is taxable by the US Government but is tax-exempt in the state where the property is located.
- The payment of principal and interest are based on a level payment schedule. The interest is fixed for the term of the Bonds.
- Structured Finance has received a legal opinion(s) that the PACE bonds are senior to all private liens. (PACE is senior to all mortgage debt.)

Additional Information

Servicing

- The County of Tulare collects all the principal and interest on the Bonds and passes them to the Bond Trustee who pays the Investor.
- The bankruptcy of the County of Tulare or the City of Porterville will not affect the ability of the Investor to receive their principal and interest on the PACE bonds. (This is by law. Structured Finance has obtained a legal memo verifying this conclusion.)

Additional Information

Foreclosure

- Should the property owner not pay their taxes the County of Tulare notifies the property owner and the 1st mortgage lender within 30 days.
- The County of Tulare shall continue to demand payment every 30 days. After 90 days the foreclosure of the property begins. After an additional 120 days the property may be sold in a tax lien foreclosure sale.

Additional Information

- The amount the Lender may bid in a foreclosure sale is equal only to the amount of the payment(s) missed plus penalty fees and interest.
- The entire outstanding principal amount of the PACE Bond is not accelerated in a default.
- The obligations of the PACE Bond transfer to the new property owner who has responsibility to make all remaining interest and principal payments.

Structured Finance

- Formed in 2009 to provide PACE financing
- Originally focused on residential PACE
- Switched to commercial in 2009 – 2010
- Providing PACE financing programs in Southern, Central & Northern California & Connecticut

Geographic Locations

Geographic Locations in California:

San Diego, Los Angeles, Ventura, Riverside, San Francisco, Bay Area, Tulare County, Sacramento County, Fresno, Bakersfield

Coming to other States:

Illinois, Ohio, Michigan, Boston, NY, Washington DC, North Carolina, Texas, Florida

Contact Information

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
APPROVING, AUTHORIZING, AND DIRECTING EXECUTION OF A JOINT
EXERCISE OF POWERS AGREEMENT RELATING TO THE
CALIFORNIA MUNICIPAL FINANCE AUTHORITY

WHEREAS, pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), certain public agencies (the "Members") have entered into a Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004, (the "Agreement"), in order to form the California Municipal Finance Authority (the "Authority"), for the purpose of promoting economic, cultural and community development and in order to exercise any powers common to the Members, including the issuance of bonds, notes or other evidences of indebtedness; and

WHEREAS, the City of Porterville (the "City"), has determined that it is in the public interest and for the public benefit that the City become a Member of the Authority in order to facilitate the promotion of economic, cultural and community development activities in the City, including the financing of projects therefor by the Authority; and

WHEREAS, there is now before this City Council the form of the Agreement; and

WHEREAS, the Agreement has been filed with the City, and the members of the City Council, with the assistance of its staff, have reviewed said document.

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

Section 1. The Agreement is hereby approved and the Mayor, City Manager or designee thereof is hereby authorized and directed to execute said document, and the City Clerk or such Clerk's designee is hereby authorized and directed to attest thereto.

Section 2. The Mayor, City Manager or designee thereof, the Clerk and all other proper officers and officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates, and to perform such other acts and deeds, as may be necessary or convenient to effect the purposes of this Resolution and the transactions herein authorized.

Section 3. The Clerk shall forward a certified copy of this Resolution and an originally executed Agreement to the Authority in care of its counsel:

Ronald E. Lee, Esq.
Jones Hall
650 California Street, 18th Floor
San Francisco, CA 94108

Section 4. This Resolution shall take effect immediately upon its passage.

PASSED, APPROVED AND ADOPTED this 5th day of August 2014.

By: _____
Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk

**JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY**

THIS AGREEMENT, dated as of January 1, 2004, among the parties executing this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to as the “Members” and those parties initially executing this Agreement are referred to as the “Initial Members”):

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the “Joint Exercise of Powers Act”), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Members is a “public agency” as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, each of the Members is empowered by law to promote economic, cultural and community development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, the increase of the tax base, and the promotion of opportunities for education, cultural improvement and public health, safety and general welfare; and

WHEREAS, each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means, including through making grants, loans or providing other financial assistance to governmental and nonprofit organizations; and

WHEREAS, each Member is also empowered by law to acquire and dispose of real property for a public purpose; and

WHEREAS, the Joint Exercise of Powers Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, as specified in this Agreement and to exercise the additional powers granted to it in the Joint Exercise of Powers Act and any other applicable provisions of the laws of the State of California; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue or execute bonds, notes, commercial paper or any other evidences of indebtedness, including leases or installment sale agreements or certificates of participation therein (herein “Bonds”), and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California to accomplish its public purposes; and

WHEREAS, the Members have determined to specifically authorize a public entity authorized pursuant to the Joint Exercise of Powers Act to issue Bonds pursuant to the Joint

Exercise of Powers Act or other applicable provisions of the laws of the State of California; and

WHEREAS, it is the desire of the Members to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake the financing and/or refinancing of projects of any nature, including, but not limited to, capital, or working capital projects, insurance, liability or retirement programs or facilitating Members use of existing or new financial instruments and mechanisms; and

WHEREAS, it is further the intention of the Members that the projects undertaken will result in significant public benefits to the inhabitants of the jurisdictions of the Members; and

WHEREAS, by this Agreement, each Member desires to create and establish the "California Municipal Finance Authority" for the purposes set forth herein and to exercise the powers provided herein;

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Purpose.

This Agreement is made pursuant to the provisions of the Joint Exercise of Powers Act. The purpose of this Agreement is to establish a public entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to a joint powers entity under the Joint Powers Act or any other applicable law, including, but not limited to, the issuance of Bonds for any purpose or activity permitted under the Joint Exercise of Powers Act or any other applicable law. Such purpose will be accomplished and said power exercised in the manner hereinafter set forth.

Section 2. Term.

This Agreement shall become effective in accordance with Section 17 as of the date hereof and shall continue in full force and effect until such time as it is terminated in writing by all the Members; provided, however, that this Agreement shall not terminate or be terminated until all Bonds issued or caused to be issued by the Authority (defined below) shall no longer be outstanding under the terms of the indenture, trust agreement or other instrument pursuant to which such Bonds are issued, or unless a successor to the Authority assumes all of the Authority's debts, liabilities and obligations.

Section 3. Authority.

A. CREATION AND POWERS OF AUTHORITY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Municipal Finance Authority" (the "Authority"), and said Authority shall be a public entity separate and apart from the Members. Its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any

Members.

B. BOARD.

The Authority shall be administered by the Board of Directors (the "Board," or the "Directors" and each a "Director") of the California Foundation for Stronger Communities, a nonprofit public benefit corporation organized under the laws of the State of California (the "Foundation"), with each such Director serving in his or her individual capacity as a Director of the Board. The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein. The number of Directors, the appointment of Directors, alternates and successors, their respective terms of office, and all other provisions relating to the qualification and office of the Directors shall be as provided in the Articles and Bylaws of the Foundation, or by resolution of the Board adopted in accordance with the Bylaws of the Foundation.

All references in this Agreement to any Director shall be deemed to refer to and include the applicable alternate Director, if any, when so acting in place of a regularly appointed Director.

Directors may receive reasonable compensation for serving as such, and shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Director, if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

The Foundation may be removed as administering agent hereunder and replaced at any time by amendment of this Agreement approved as provided in Section 16; provided that a successor administering agent of this Agreement has been appointed and accepted its duties and responsibilities under this Agreement.

C. OFFICERS; DUTIES; OFFICIAL BONDS.

The officers of the Authority shall be the Chair, Vice-Chair, Secretary and Treasurer (defined below). The Board, in its capacity as administering agent of this Agreement, shall elect a Chair, a Vice-Chair, and a Secretary of the Authority from among Directors to serve until such officer is re-elected or a successor to such office is elected by the Board. The Board shall appoint one or more of its officers or employees to serve as treasurer, auditor, and controller of the Authority (the "Treasurer") pursuant to Section 6505.6 of the Joint Exercise of Powers Act to serve until such officer is re-elected or a successor to such office is elected by the Board.

Subject to the applicable provisions of any resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing Bonds (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent, and except as may otherwise be

specified by resolution of the Board, the Treasurer is designated as the depository of the Authority to have custody of all money of the Authority, from whatever source derived, and shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Joint Exercise of Powers Act.

The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond with the Secretary of the Authority in the amount specified by resolution of the Board, but in no event less than \$1,000.

The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Board shall have the power, by resolution, to the extent permitted by the Joint Exercise of Power Act or any other applicable law, to delegate any of its functions to one or more of the Directors or officers, employees or agents of the Authority and to cause any of said Directors, officers, employees or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Board or the Authority.

D. MEETINGS OF THE BOARD.

(1) Ralph M. Brown Act.

All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California), or any successor legislation hereinafter enacted (the "Brown Act").

(2) Regular Meetings.

The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

(5) Quorum.

A majority of the Board shall constitute a quorum for the transaction of business. No action may be taken by the Board except upon the affirmative vote of a majority of the Directors constituting a quorum, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Authority may adopt, from time to time, by resolution of the Board such rules and regulations for the conduct of its meetings and affairs as may be required.

Section 4. Powers.

The Authority shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for any purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Authority is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to make grants, loans or provide other financial assistance to governmental and nonprofit organizations (e.g., the Members or the Foundation) to accomplish any of its purposes; and generally to do any and all things necessary or convenient to accomplish its purposes.

Without limiting the generality of the foregoing, the Authority may issue or cause to be issued Bonds, and pledge any property or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law; provided, however, the Authority shall not issue Bonds with respect to any project located in the jurisdiction of one or more Members unless the governing body of any such Member, or its duly authorized representative, shall approve, conditionally or unconditionally, the project, including the issuance of Bonds therefor. Such approval may be evidenced by resolution, certificate, order, report or such other means of written approval of such project as may be selected by the Member (or its authorized representative) whose approval is required. No such approval shall be required in

connection with Bonds that refund Bonds previously issued by the Authority and approved by the governing board of a Member.

The manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California general law city could exercise such powers and perform such duties. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

Section 5. Fiscal Year.

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year as established from time to time by resolution of the Board, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 2004.

Section 6. Disposition of Assets.

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Members.

Section 7. Bonds.

From time to time the Authority shall issue Bonds, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing shall be used by the Authority. The expenses of the Board shall be paid from the proceeds of the Bonds or any other unencumbered funds of the Authority available for such purpose.

Section 8. Bonds Only Limited and Special Obligations of Authority.

The Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members or the Authority. The Bonds shall be only special obligations of the Authority, and the Authority shall under no circumstances be obligated to pay the Bonds except from revenues and other funds pledged therefor. Neither the Members nor the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the

Members nor the faith and credit of the Authority shall be pledged to the payment of the principal of, premium, if any, or interest on the Bonds nor shall the Members or the Authority in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Bond or related document shall be deemed to be a covenant or agreement of any Director, or any officer, employee or agent of the Authority in his or her individual capacity and neither the Board of the Authority nor any Director or officer thereof executing the Bonds shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

Section 9. Accounts and Reports.

All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by each Member.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member and also with the county auditor of each county in which a Member is located; provided, however, that to the extent permitted by law, the Authority may, instead of filing such report with each Member and such county auditor, elect to post such report as a public record electronically on a website designated by the Authority. Such report if made shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

The Treasurer is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board and the Members which report shall describe the amount of money held by the Treasurer for the Authority, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provided regular reports covering such amounts).

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

In any Fiscal Year the Board may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

Section 10. Funds.

Subject to the applicable provisions of any Indenture, which may provide for a trustee or other fiduciary to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to the accounting procedures developed under Sections 3.C and 9, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions of purposes of this Agreement.

Section 11. Notices.

Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk of the governing body of each Member; provided, however, that to the extent permitted by law, the Authority may provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

Section 12. Additional Members/Withdrawal of Members.

Qualifying public agencies may be added as parties to this Agreement and become Members upon: (1) the filing by such public agency with the Authority of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any Bonds remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Section 13. Indemnification.

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Director or an officer, employee of other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Director or an officer, employee or other agent of the Authority, against expenses, including attorney's fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Section 14. Contributions and Advances.

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Authority by the Members for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution or advance. Any such advance may be made subject to repayment, and in such case shall be repaid in the manner agreed upon by the Authority and the Member making such advance at the time of such advance. It is mutually understood and agreed to that no Member has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though any Member may do so. The Members understand and agree that a portion of the funds of the Authority that otherwise may be allocated or distributed to the Members may instead be used to make grants, loans or provide other financial assistance to governmental units and nonprofit organizations (e.g., the Foundation) to accomplish any of the governmental unit's or nonprofit organization's purposes.

Section 15. Immunities.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, and other benefits which apply to the activity of officers, agents or employees of Members when performing their respective functions within the territorial limits of their respective public agencies, shall apply to the same degree and extent to the Directors, officers, employees, agents or other representatives of the Authority while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

Section 16. Amendments.

Except as provided in Section 12 above, this Agreement shall not be amended, modified, or altered, unless the negative consent of each of the Members is obtained. To obtain the negative consent of each of the Members, the following negative consent procedure shall be followed: (a) the Authority shall provide each Member with a notice at least sixty (60) days prior to the date such proposed amendment is to become effective explaining the nature of such proposed amendment and this negative consent procedure; (b) the Authority shall provide each Member who did not respond a reminder notice with a notice at least thirty (30) days prior to the date such proposed amendment is to become effective; and (c) if no Member objects to the proposed amendment in writing within sixty (60) days after the initial notice, the proposed amendment shall become effective with respect to all Members.

Section 17. Effectiveness.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Members on the date that the Board shall have received from two of the Initial Members an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Initial Member approving this Agreement and the execution and delivery hereof.

Section 18. Partial Invalidity.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 19. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the other Members.

Section 20. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement is the complete and exclusive statement of the agreement among the Members, which supercedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the City of Porterville has caused this Agreement to be executed and attested by its duly authorized representatives as of the 5th day of August, 2014.

By: _____

Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

By: _____

Patrice Hildreth, Chief Deputy City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AUTHORIZING THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY TO ESTABLISH A COMMUNITY FACILITIES DISTRICT TO PROVIDE FINANCING FOR THE ACQUISITION, INSTALLATION AND IMPROVEMENT OF RENEWABLE ENERGY, ENERGY EFFICIENCY AND WATER CONSERVATION IMPROVEMENTS THAT ARE AFFIXED TO OR ON PROPERTY IN THE CITY, ACCEPT APPLICATIONS FROM PROPERTY OWNERS AND LEVY SPECIAL TAXES WITHIN THE TERRITORY OF THE CITY; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Municipal Finance Authority (the “Authority”) is a joint exercise of powers authority whose members include numerous local agencies in the State of California, including the City of Porterville (the “City”); and

WHEREAS, the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”), Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code, authorizes local agencies, including the Authority, to establish community facilities districts, levy special taxes and incur debt (as defined in the Act) to finance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements that are affixed to or on real property and in buildings, whether the real property and buildings are privately or publicly owned (such improvements are referred to as “Facilities” in this resolution); and

WHEREAS, the Act authorizes local agencies to use an alternate procedure for forming a community facilities district and conducting an election on the proposition of authorizing bonded indebtedness and other debt for financing of Facilities, pursuant to which:

A. A community facilities district may initially consist solely of territory proposed for annexation to a community facilities district in the future, with the condition that a parcel or parcels within that territory may be annexed to the community facilities district and subjected to the special tax only with the unanimous approval of the owner or owners of the parcel or parcels at the time of annexation, or in compliance with other procedures established by the Act; and

B. The proposition to authorize bonded indebtedness may be approved by the owner or owners of a parcel or parcels of property at the time of annexation to the CFD pursuant to the unanimous approval described in 53328.1 of the Act or in compliance with other procedures established by the Act, pursuant to which no additional hearings or procedures are required, and each such unanimous approval shall be deemed to constitute a unanimous vote in favor of such proposition.

WHEREAS, the City desires that the Authority establish a community facilities district (the “CFD”) under the Act within the City’s incorporated areas, levy special taxes, issue bonds and incur debt in order to allow the owners of property in those areas that so choose (the

“Participating Property Owners”) to receive special tax financing for the acquisition, installation and improvement of Facilities on their property; and

WHEREAS, the Authority is willing to consider establishing the CFD, subject to receipt of a request for it to do so from the City; and

WHEREAS, pursuant to Government Code Section 6586.5, a notice of public hearing has been published once at least five days prior to the date hereof in a newspaper of general circulation in the City and a public hearing has been duly conducted by this City Council concerning the significant public benefits of the Authority forming the CFD and providing financing for the acquisition, installation and improvement of Facilities on property in the incorporated territories in the City.

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

Section 1. On the date hereof, the City Council held a public hearing and hereby finds and declares that the issuance of bonds and other debt by the Authority for the CFD will provide significant public benefits, including without limitation, savings in effective interest rate, 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 2. The City hereby consents to the Authority’s formation of the CFD and the conduct of the special tax proceedings; provided, that the City will not be responsible for the conduct of any special tax proceedings, the levy of special taxes or any required remedial action in the case of delinquencies in related special tax payments, or the issuance, sale or administration of the bonds or any other debt incurred by the Authority for the CFD.

Section 3. The appropriate officials and staff of the City are hereby authorized and directed to make applications for the financing to be provided by the Authority through the CFD available to all property owners who wish to finance Facilities; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The following staff persons, together with any other staff persons chosen by the City’s General Manager from time to time, are hereby designated as the contact persons for the Authority: Community Development Director or assignee.

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the financing of the Facilities through the CFD for Participating Property Owners.

Section 5. The City Council hereby finds that adoption of this Resolution is not a “project” under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

Section 6. 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 the Secretary of the Authority.

PASSED, APPROVED AND ADOPTED this 5TH day of August 2014.

By: _____
Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk