

Agenda Item:I.2
Meeting Date:9/2/2014



ADMINISTRATIVE REPORT

 Print

TO: City Manager
FROM: Bill King, Principal Planner
DATE: 07/14/2014
SUBJECT: Property Assessed Clean Energy (PACE) Program

REPORT IN BRIEF

Consider adopting a Resolution and related Joint Powers Agreement, enabling the California HERO Program to function within the City limits. HERO is a Property Assessed Clean Energy [PACE] Program in which property owners may voluntarily utilize property assessed financing for renewable energy/energy efficiency/water efficiency improvements or electric vehicle charging infrastructure.

RECOMMENDATION:

City Council - Adopt a motion:

- A. Approving **Resolution 2014-42**, a Resolution of the City Council of the City of Merced, California, consenting to the inclusion of properties within the City's jurisdiction in the California HERO Program to finance distributed generation renewable energy sources, energy and water efficiency improvements and electric vehicle charging infrastructure and approving an amendment to a certain Joint Powers Agreement related thereto; and,
- B. Approving Amendment to the Joint Powers Agreement Adding City of Merced as an Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services with such City, contingent upon approval by the Western Riverside Council of Governments (WRCOG); and,
- C. Authorizing the City Manager or his designee to execute all related documents.

ALTERNATIVES:

1. Approve, as recommended by staff; or,
2. Approve, subject to other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion): or.

3. Deny; or,
4. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY:

Charter of the City of Merced, Section 200.

History and Past Actions:

Assembly Bill (AB) 811 was signed into law on July 21, 2008, and AB 474, effective January 1, 2010, amended Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) and authorizes a legislative body to designate an area within which authorized public officials and free and willing property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources, energy efficiency, and/or water conservation improvements that are permanently fixed to real property, as specified. Attachment 3 shows member cities and counties of the California HERO program. Merced County and Madera County have recently joined.

Since its launch in late 2011, the HERO Program has been very successful in Western Riverside County. The Program has approved over \$1.1 billion in applications and has funded over \$253 million in projects. Because of its success, the California HERO Program was developed as a turnkey program to save other California jurisdictions time and resources in developing a stand alone program. Jurisdictions only need to adopt the form of resolution (Attachment 1) accompanying this staff report and approve an amendment to the joint exercise of powers agreement (Attachment 2) related to the California HERO Program to begin the process.

Description:

The California HERO Program is being offered to allow property owners in participating cities and counties to finance renewable energy, energy water efficiency improvements and electric vehicle charging infrastructure on their property. If a property owner chooses to participate, the improvements to be installed on such owner’s property will be financed by the issuance of bonds by a joint power authority, Western Riverside Council of Governments (“WRCOG”), secured by a voluntary contractual assessment levied on such owner’s property. Participation in the program is 100% voluntary. Property owners who wish to participate in the program agree to repay the money through the voluntary contractual assessment collected together with their property taxes.

The benefits to the property owner include:

- *Eligibility:* In today’s economic environment, alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements or electric vehicle charging infrastructure may not be available. As such many property owners do not have options available to them to lower their utility bills.
- *Savings:* Energy prices continue to rise and installing energy efficient, water efficient and renewable energy models lower utility bills.
- *100% voluntary.* Property owners can choose to participate in the program at their discretion.

- *Payment obligation stays with the property.* Under Chapter 29, a voluntary contractual assessment stays with the property upon transfer of ownership. Even if there were private enterprise alternatives, most private loans are due on sale of the benefited property, which makes it difficult for property owners to match the life of the repayment obligation with the useful life of the financed improvements. Certain mortgage providers will, however, require the assessment be paid off at the time the property is refinanced or sold.

- *Prepayment option.* The property owner can choose to pay off the assessments at any time, subject to applicable prepayment penalties.

- *Customer oriented program.* Part of the success of the program is the prompt customer service.

The benefits to the City include:

- Increase in local jobs.
- An increase in housing values (higher efficient homes are worth more money).
- An increase in sales, payroll, building permit and property tax revenues.
- As in conventional assessment financing, the City is not obligated to repay the bonds or to pay the assessments levied on the participating properties.
- All California HERO Program and assessment administration, bond issuance and bond administration functions are handled by California HERO. Little, if any, City staff time is needed to participate in the California HERO Program.
- The City can provide access for its residents to the California HERO Program without the higher staff costs that an independent program established by the City would require.
- Energy-efficient homes and businesses will help the City attain its greenhouse gas emission reduction target and interest to pursue CEQA-based permit streamlining.

The proposed resolution enables the California HERO Program to be available to owners of property within our City to finance renewable energy, energy efficiency and water efficiency improvements and electric vehicle charging infrastructure. The resolution approves an Amendment to the Western Riverside Council of Governments (WRCOG) Joint Powers Agreement to add the City as an Associate Member in order that the California HERO Program may be offered to the owners of property located within the City who wish to participate in the California HERO Program.

Budget/Appropriate Action:

There is no negative fiscal impact to the City's general fund incurred by consenting to the inclusion of properties within the City limits in the California HERO Program. All California HERO Program administrative costs are covered through an initial administrative fee included in the property owner's voluntary contractual assessment and an annual administrative fee which is also collected on the property owner's tax bill.

Respectfully Submitted,
William R. King, Principal Planner

Reviewed,
David Gonzalves, Director of Development Services

Approved By,
John M. Bramble, City Manager

ATTACHMENTS:

[1. Resolution No. 2014-](#)

[2. Joint Powers Agreement](#)

[3. Map of HERO Communities](#)

RESOLUTION NO. 2014-_____

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

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

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

WHEREAS, City of Merced (the “City”) is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, and protection of the environment; 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 the City in financing such Improvements; and,

WHEREAS, Authority has authority to establish the California HERO Program, which will be such a voluntary contractual assessment program, as permitted by the Act; and

WHEREAS, the Authority JPA, originally made and entered into on April 1, 1991, as amended to date, and the Amendment to Joint Powers Agreement Adding the City of Merced as an Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services within the City (the "JPA Amendment"), by and between Authority and the City, a copy of which is attached as Exhibit "A" hereto, will assist property owners within the incorporated area of the City in financing the cost of installing Improvements; 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.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

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

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

SECTION 3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the California HERO

Program and authorizes Authority, upon satisfaction of the conditions imposed in this Resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent and be secured by such contractual assessments. Upon said consent, the City and its officers, officials, employees and agents shall have no obligations or liability relating to the California HERO Program operating within the City of Merced’s corporate boundaries.

SECTION 4. This City Council hereby approves the JPA Amendment and authorizes the execution thereof by appropriate City officials.

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

SECTION 6. 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.

///

///

///

///

///

///

///

///

///

///

///

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2014, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Ken Rye 8/4/14
City Attorney Date

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

This Amendment to the Joint Powers Agreement (“JPA Amendment”) is made and entered into on the ___ day of _____, 2014, by City of Merced (“City”) and the Western Riverside Council of Governments (“Authority”) (collectively the “Parties”).

RECITALS

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

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

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

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

WHEREAS, City desires to allow owners of property within its jurisdiction to participate in the California HERO Program and to allow Authority to conduct proceedings under Chapter 29 to finance Improvements to be installed on such properties; and,

WHEREAS, This JPA Amendment will permit City to become an Associate Member of Authority, will allow assumption of jurisdiction by Authority for all purposes of the California HERO Program, will authorize Authority to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent and be secured by such contractual assessments, and will facilitate 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, including the operation of a PACE financing program, within the incorporated territory of City; and,

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

MUTUAL UNDERSTANDINGS

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

A. JPA Amendment.

1. The Authority JPA. City agrees to the terms and conditions of the Authority JPA, attached.
2. Associate Membership. By adoption of this JPA Amendment, City shall become an Associate Member of Authority on the terms and conditions set forth herein and the Authority JPA and consistent with the requirements of the Joint Exercise of Powers Act. The rights and obligations of City as an Associate Member are limited solely to those terms and conditions expressly set forth in this JPA Amendment for the purposes of implementing the California HERO Program

within the incorporated territory of City. Except as expressly provided for by the this JPA Amendment, City shall not have any rights otherwise granted to Authority's Regular Members by the Authority JPA, including but not limited to the right to vote on matters before the Executive Committee or the General Assembly, the right to amend or vote on amendments to the Authority JPA, and the right to sit on committees or boards established under the Authority JPA or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee; provided, however, that Section 5.1 of the Joint Powers Agreement of the Western Riverside Council of Governments shall apply to the City. 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 of the incorporated territory within City's jurisdiction within which the Authority may entered into contractual assessments under the California HERO Program (the "Program Boundaries") is 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. Establishment of California HERO Program. 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 develop and implement a plan for the financing of the purchase and installation of the Eligible Improvements under the California HERO Program.

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

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

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

7. City's Obligations. Except for the City's consent of the Authority's assumption of jurisdiction of the California HERO Program within the corporate boundaries of the City of Merced, the City and its officials, officers, employees and agents shall have no obligations or liability relating to the California HERO Program operating within the City of Merced's corporate boundaries.

C. Miscellaneous Provisions.

1. Withdrawal. City or Authority may withdraw from this JPA Amendment upon six (6) months written notice to the other party; provided, however, there is no outstanding indebtedness of Authority within City. The

provisions of Section 6.2 of the Authority JPA shall not apply to City under this JPA Amendment. City may withdraw approval for conduct of the HERO Program within the jurisdictional limits of City upon thirty (30) written notice to WRCOG without liability to the Authority or any affiliated entity. City withdrawal shall not affect the validity of any voluntary assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date of such withdrawal so long as the applications for such voluntary assessment contracts were submitted to and approved by WRCOG prior to the date of City's notice of withdrawal.

2. Liability. 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. In no event shall the City and/or its officials, officers, employees and agents be held liable for any damages or liability resulting out of Authority's actions within the City of Merced's corporate boundaries pursuant to this JPA Amendment.

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

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

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

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

City:
City Clerk
City of Merced
678 W. 18th Street
Merced, California 95340

With a copy to:
City Attorney
City of Merced
678 W. 18th Street
Merced, California 95340

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

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

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

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

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

the Parties to this JPA Amendment with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

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

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

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

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

[Continued on next page]

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.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk
APPROVED AS TO FORM:

BY: Ken Reed 8/7/14
City Attorney Date

ACCOUNT DATA:

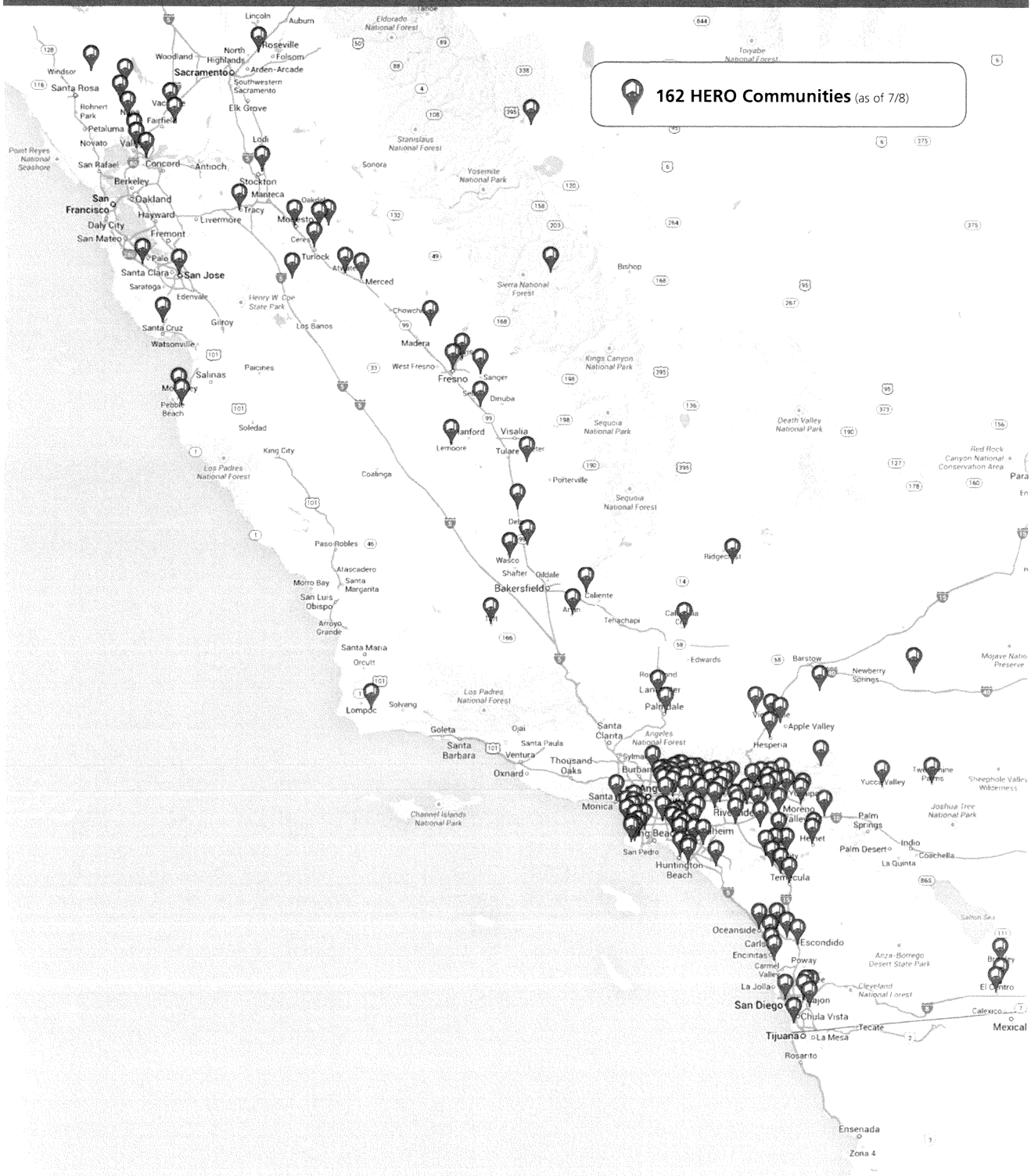
BY: _____
Verified by Finance Officer

[Continued on next page]

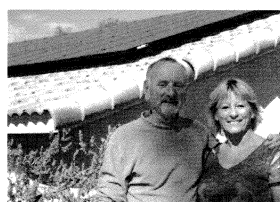
WESTERN RIVERSIDE COUNCIL OF
GOVERNMENTS

BY: _____
Executive Committee Chair

(Typed Name)



Ms. Roberta Tandy, Corona
Installed Air Conditioning Unit through A-AVIS



Devlin and Raymond Filmore, Canyon Lake
Installed Solar PV through 360 Solar



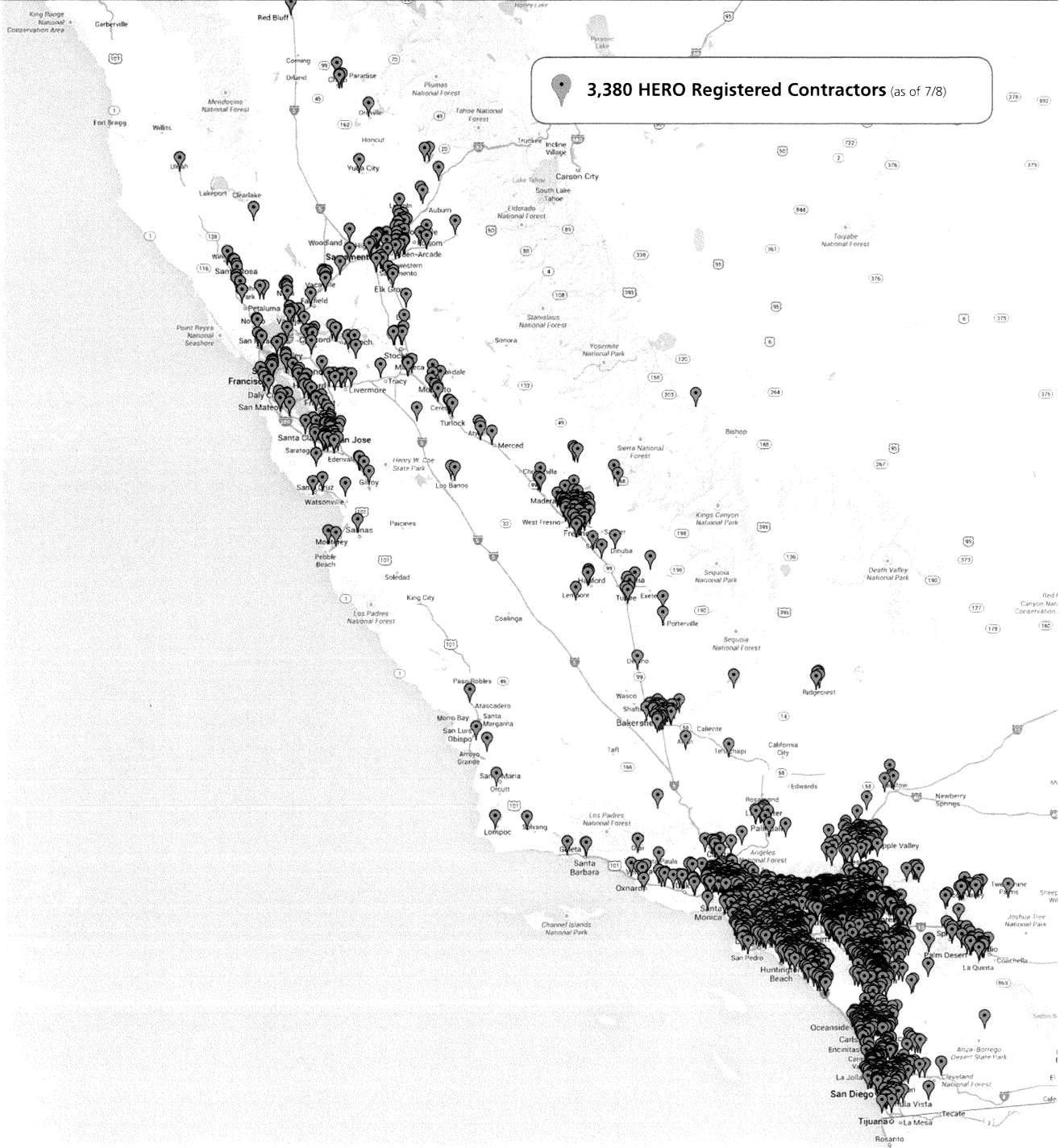
Contreras Family, Lake Elsinore
Installed Solar PV System through Verengo



Howard and Maureen Ochi, Moreno Valley
Installed Windows through CA Showcase

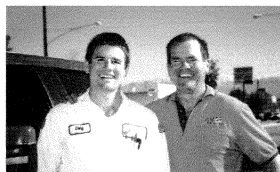


REGISTERED CONTRACTORS



Synergy Companies
Home Energy Performances

"HERO has helped us not only hire more people, but has helped our customer's be able to do the improvements that they really need and has changed lives."



A-AVIS
Heating, Air Conditioning, and Plumbing

"The HERO Program truly lives up to its name by rescuing people who can't afford the improvements that they need in order to lower their bills and also to provide comfort."



California Showcase
Windows, Doors, and Home Improvements

"HERO has had an extreme impact on our business. It is 75% of our work at this point and business has been so good that we have hired seven more people so far."



Pell Solar
Solar Company

"Since joining with HERO, our office and sales staff have doubled from 20 to 48 people. We have boosted our company sales over 245% from last year's sales. We only started selling HERO since May 2012. Give us a full year and more territories and sky's the limit."