

MEETING AGENDA

The City Council/Successor Agency of the City of Firebaugh
Vol. No.17/11-06

Location of Meeting: Andrew Firebaugh Community Center
1655 13th Street, Firebaugh, CA 93622
Date/Time: November 6, 2017/6:00 p.m.

CALL TO ORDER

ROLL CALL
Mayor Brady Jenkins
Mayor Pro Tem Felipe Pérez
Council Member Marcia Sablan
Council Member Elsa Lopez
Council Member Freddy Valdez

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Andrew Firebaugh Community Center to participate at this meeting, please contact the Deputy City Clerk at (559) 659-2043. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Andrew Firebaugh Community Center.

Any writing or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at City Hall, in the Deputy City Clerk's office, during normal business hours.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

CONSENT CALENDAR

Items listed on the calendar are considered routine and are acted upon by one motion unless any Council member requests separate action. Typical items include minutes, claims, adoption of ordinances previously introduced and discussed, execution of agreements and other similar items.

1. APPROVAL OF MINUTES – The City Council regular meeting on October 16, 2017.

PUBLIC HEARING

2. ORDINANCE NO. 17-03 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ESTABLISHING REGULATIONS WITHIN THE FIREBAUGH MUNICIPAL CODE TO IMPLEMENT THE ADULT USE OF MARIJUANA ACT, INCLUDING ALLOWING COMMERCIAL CANNABIS OPERATIONS IN THE M-2 (HEAVY INDUSTRIAL) ZONE, SUBJECT TO A CONDITIONAL USE PERMIT, AND ESTABLISHING DEVELOPMENT STANDARDS FOR SUCH OPERATIONS – FIRST READING.

Recommended Action: Council receives public comment & waives first reading of Ord. 17-03.

NEW BUSINESS

3. THE CITY COUNCIL OF THE CITY OF FIREBAUGH TO REVIEW AND DISCUSS POTENTIAL ANNEXATION OF EIGHT PARCELS WHICH APPROXIMATELY 115 ACRES.

Recommended Action: Council receives public comments & staff direction.

4. THE CITY COUNCIL OF THE CITY OF FIREBAUGH TO REVIEW SOCIAL MEDIA INTERNET COMMUNICATIONS WITH CONSULTANT ON PROVIDED SERVICES.

Recommended Action: Council receives public comments, Informational Item only.

5. RESOLUTION NO. 17-43 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH, CALIFORNIA, APPROVING ASSOCIATE MEMBERSHIP BY THE CITY IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY; AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING TO ASSOCIATE MEMBERSHIP OF THE CITY IN THE AUTHORITY; AUTHORIZING THE CITY TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF FIREBAUGH; AND AUTHORIZING RELATED ACTIONS.

Recommended Action: Council receives public comment & approves Res. No. 17-43.

6. RESOLUTION NO. 17-44 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING AN APPLICATION FOR FUNDING FROM THE DEPARTMENT OF WATER RESOURCES AND DESIGNATING A REPRESENTATIVE TO EXECUTE THE AGREEMENT AND ANY AMENDMENTS THERETO, FOR THE FIREBAUGH MULTI-BENEFIT MANAGEMENT PROJECT.

Recommended Action: Council receives public comment & approves Res. No. 17-44.

7. RESOLUTION NO. 17 - 45 - RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING THE CITY MANAGER TO SETTLE CLAIM NUMBER 938194-GF WITH NATIONWIDE AGRIBUSINESS INS. NAIC, et al. AND EXECUTE A PROPERTY DAMAGE RELEASE.

Recommended Action: Council receives public comment & approves Res. No. 17-45.

8. RESOLUTION NO. 17 - 46 - RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH FOR THE ACCEPTANCE OF WATER MAIN REPLACEMENT 15-CDBG-10568, AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION WITH FRESNO COUNTY AND AUTHORIZING THE CITY MANAGER TO RELEASE PAYMENT AND PERFORMANCE BONDS AND TO MAKE FINAL PAYMENT OF RETENTION MONIES TO ROLFE CONSTRUCTION.

Recommended Action: Council receives public comment & approves Res. No. 17-46.

9. THE CITY COUNCIL OF THE CITY OF FIREBAUGH TO REVIEW AND DISCUSS PURCHASE OF IPADS WITH INTERNET SERVICES FOR CITY COUNCIL.

Recommended Action: Council receives public comments & staff direction.

STAFF REPORTS

PUBLIC COMMENT ON CLOSED SESSION ITEM ONLY

CLOSED SESSION

10. Government Code Section 54957

PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT: City Manager.

ANNOUNCEMENT AFTER CLOSED SESSION

ADJOURNMENT

Certification of posting the Agenda

I declare under penalty of perjury that I am employed by the City of Firebaugh and that I posted this agenda on the bulletin boards at City Hall, November 3, 2017 at 5:00 p.m. by Rita Lozano Deputy City Clerk.

MEETING MINUTES

The City Council/Successor Agency of the City of Firebaugh Vol. No. 17/10-16

Location of Meeting: Andrew Firebaugh Community Center
1655 13th Street, Firebaugh, CA 93622

Date/Time: October 16, 2017/6:00 p.m.

CALL TO ORDER Meeting called to order by Mayor Jenkins at 6:00 p.m.

ROLL CALL

PRESENT: Mayor Brady Jenkins
Mayor Pro Tem Felipe Perez
Council Member Marcia Sablan
Council Member Elsa Lopez
Council Member Freddy Valdez

ABSENT:

OTHERS: City Attorney Meggin Boranian; Acting City Manager/Public Works Director, Ben Gallegos; Deputy City Clerk, Rita Lozano; Finance Director, Pio Martin; Police Chief, Sal Raygoza, Fire Chief, John Borboa & others.

PLEDGE OF ALLEGIANCE Council Member Felipe Perez led pledge of Allegiance.

PRESENTATION PROCLAMATION – Clyde Fannon

PUBLIC COMMENT None

CONSENT CALENDAR

1. APPROVAL OF MINUTES – The City Council regular meeting on September 18, 2017.
2. WARRANT REGISTER – Period starting September 1, and ending on September 30, 2017.

September 2017	General Warrants	#35611 - #35755	\$ 544,269.71
	Payroll Warrants	#68701 - #68798	\$ 171,569.34
TOTAL			\$ 715,839.05

Motion to accept consent calendar by Council Member Sablan, second by Council Member Perez; motion pass by unanimous 5-0 vote.

NEW BUSINESS

3. RESOLUTION NO. 17-40 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING THE CITY MANAGER TO EXECUTE A PROGRAM SUPPLEMENT AGREEMENT NO. F019 TO AGREEMENT NO. 06-5224F15, FOR PROJECT NO. ATPL-5224(022) (TRAIL REHABILITATION AND PEDESTRIAN IMPROVEMENTS; SAN JOAQUIN RIVER FROM 9TH STREET TO RIVER LANE IN FIREBAUGH).

Motion to approve Res. No. 17-40 by Council Member Lopez, second by Council Member Sablan; motion pass by unanimous 5-0 vote.

4. RESOLUTION NO. 17-41 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING THE CITY MANAGER TO EXECUTE MASTER AGREEMENT NO. 06-5224F15, ADMINISTERING AGENCY-STATE AGREEMENT FOR FEDERAL-AID PROJECTS.

Motion to approve Res. No. 17-41 by Council Member Lopez, second by Council Member Sablan; motion pass by unanimous 5-0 vote.

5. RESOLUTION NO. 17-42 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES WITH CSG CONSULTANTS, INC.

Motion to approve Res. No. 17-42 by Council Member Lopez, second by Council Member Perez; motion pass by unanimous 5-0 vote.

STAFF REPORTS

- **Fire Chief, John Borboa** – Set a record with 90 calls for September, hoping for it to slow down.
- **Police Chief, Sal Raygoza** – SB 43 was signed by the Governor, so City Staff will be writing to the County and State about purchasing the Courthouse. The City's appraisal on the courthouse was estimated at \$199,000, but the appraisal by the State was \$746,000. The current Police Station is being remolded. Crime has been low, but there was a group of individuals from the Bay area tried to break in to Thomas Tractor, a chase persuade, the van with the individuals were
- **Finance Director, Pio Martin** – Reported on an issue with the water bills of August, which caused on issue with September's billing, the reader was replaced because it broke, when a practice run was done to check if everything was operating properly the meter reads were not removed. So only one week was billed for August usage causing September show a higher reading then normal. Auditor is working on the audit; this is the final year for his contract, so an RFP will need to be processed.
- **Deputy City Clerk, Rita Lozano** – Nothing to report.
- **Public Works Director, Ben Gallegos** – Estimated cost of \$18,000 to repair ballers. Senior Center went out for bid, the seconded time, one bidder submitted, which was over the engineer's estimate, so staff will work with the contractor to complete a rehab instead of full remold. Budgeted for street repair on 8th St from 33 Hwy to P St, if city receives funds from CDBG, additional work will be done or funding will go to the courthouse project.
- **City Attorney, Meggin Boranian** – Nothing to report.
- **Council Member Lopez** – Stated concern about presentation from man with the 420 company, he presented as if he is beginning to operate his cannabis business soon, but city is still working on the ordinance. Ron Louie expressed interest in operating a medical cannabis sales business. Asked staff to research city owned property at 12th & N Street as a location for operation, whether the City is interested in selling or leasing.
- **Council Member Valdez** – Attended a three-day conference ICSC in Los Angeles, October 2-4, 2017, felt it was a little more successful with some companies and less successful with others. Thanked PAL organization for bringing out Fresno Skate Salvage and providing music and food. The event brought out kids of all ages and gave way free skateboards to several kids. Council Member reported event dates in March at Monterey and in October at LA.

PUBLIC COMMENT ON CLOSED SESSION ITEM ONLY

Motion to enter closed session at 6:39 pm, by Council Member Sablan, second by Council Member Valdez; motion pass by unanimous 5-0 vote.

CLOSED SESSION

6. REAL ESTATE NEGOTIATION – Pursuant to Government Code Section #54956.8

Owner or Designative Rep. City Negotiator Ben Gallegos

APN 008-074-01, 008-074-02, 008-074-03

Motion to enter open session at 7:04 pm, motion pass by unanimous 5-0 vote.

ANNOUNCEMENT AFTER CLOSED SESSION:

Nothing to report.

ADJOURNMENT

Motion to adjourn by Councilmember Valdez, second by Councilmember Perez; motion passes by unanimous 5-0 vote at 7:14 p.m.

FIREBAUGH CITY COUNCIL

STAFF REPORT

Date: November 6, 2017
To: Firebaugh City Council
From: Karl Schoettler, Planning Consultant
Subject: Public hearing on Zoning Ordinance Amendment 2017-01 (Regulation of commercial marijuana businesses)

Summary/Recommendation

The proposed ordinance would allow commercial businesses that cultivate, process, manufacture, test and deliver marijuana products. Such businesses would be limited to the M-2 (Heavy Industrial) zone and be permitted by Conditional Use Permit, subject to special operating standards and restrictions.

On October 23, 2017, the Planning Commission conducted a public hearing and voted to recommend adoption of the ordinance. It is recommended that the City Council now conduct a public hearing and vote to introduce Ordinance 2017-03.

Analysis

On November 8, 2016, the voters of California passed Proposition 64 - the Adult Use of Marijuana Act (AMUA). Among other things, the proposition authorized the following throughout California:

- Persons over 21 years old may ingest marijuana products in private locations, for recreational (non-medical) use.
- Persons over 21 may have up to 28.5 grams of marijuana in their possession for non-medical use.
- Each dwelling may have up to six marijuana plants under cultivation.
- Cities may allow commercial marijuana stores (dispensaries).
- Cities may allow commercial marijuana cultivation, manufacturing and testing businesses.
- Cities may allow the delivery of marijuana products to residents in the City.

Of the foregoing, cities have the choice of whether to allow or prohibit marijuana dispensaries, cultivation/manufacturing, and delivery. It has been estimated that cities could stand to receive significant revenues by taxing dispensaries and cultivation/manufacturing operations. Cities must pass a local ordinance by the end of 2017; otherwise, the more lenient State regulations will apply.

The Firebaugh City Council has taken note of this and debated the issue over the past several months. Following discussion, the Council has directed staff to prepare an ordinance that would allow the establishment of commercial cultivation/manufacturing businesses – by Conditional Use Permit – only in the “M-2” (Heavy Industrial) zone.

Staff has reviewed regulations adopted by other cities, including the City of Coalinga, and incorporated those into an ordinance for Firebaugh. As the Council may be aware, Coalinga is ahead of most cities in adopting regulations pertaining to commercial marijuana activities.

Both the City Council and Planning Commission have conducted workshops on a draft version of the ordinance and asked various questions of staff. The City Council also received a presentation by the Police Chief of the City of Coalinga.

The following is a summary of key provisions of the resolution (ordinance). There are four main components:

-**The “preamble”** (starting on page 1) - includes a review of the history, concerns and issues that are being addressed by the ordinance.

-**Section 1 (Zoning classification)** (starting on page 2) adds the use “Marijuana cultivation, manufacturing, testing, transportation and distribution” as a permitted land use, subject to a Conditional Use Permit, in the M-2 (Heavy Industrial) zone only, subject to additional operating regulations that are being established in the “Special Uses” chapter (Chapter 41) of the Zoning Ordinance.

It should be noted that the ordinance does not allow marijuana dispensaries – commercial businesses that sell marijuana on a retail basis. The ordinance also prohibits delivery of marijuana products to residents of the City.

-**Section two (Standards and Requirements)** (starting on page 6) includes all of the standards and operating conditions that would apply to marijuana businesses. These are reviewed in more detail below.

-**Section 3 (Definitions)** (starting on page 20) adds specific definitions of terms that are used in the ordinance.

A more in-depth analysis of key sections of the draft ordinance is as follows:

Section 1 (pp. 2–5) – Zoning Classification

-This section amends the Zoning Ordinance’s permitted uses list in the M-1/M-2 zones to add the use “Marijuana cultivation, manufacturing, testing, transportation and distribution” as a permitted land use, subject to a Conditional Use Permit, only in M-2 zone. The M-2 zone is currently limited to lands west of the railroad, north of Bullard Avenue (see Map 1).

As the City Council is aware, a Conditional Use Permit (C.U.P.) requires a project to undergo a public hearing before Planning Commission. In this situation, the City must notify all property owners within 300 feet of the site, must publish the notice in the newspaper, and must post the notice at City Hall – all at least ten days before the date of the hearing.

This section of the ordinance also clarifies that marijuana businesses will be subject to special operating standards in the “Special Uses” chapter of the Zoning Ordinance (discussed below).

Section 2 (p. 6-19) – This section of the ordinance establishes special operating standards in Chapter 41 (Special Uses) of the Zoning Ordinance. These standards would apply to any marijuana cultivation/processing business that is established in the M-2 zone. A summary of these standards is as follows:

Operational Requirements and Restrictions (pp. 6-10). This section establishes operating requirements that will apply to all marijuana businesses, such as security, access, odor control, deliveries, compliance with the building code, etc. Key regulations include:

- All employees of a marijuana business must undergo a background check by the Police Department and be registered annually with the City.
- There shall be no signage on the site that identifies the activity of the business.
- There shall be no marijuana or alcohol consumption on the site.
- No other commercial activities are allowed on the site.
- No retail sales of marijuana or public access is allowed.
- No minors are allowed on the site.
- The business must be at least 600 feet from any school.
- The business must comply with all building, health and environmental codes.

Map 1: Aerial Photo Showing Location of M-2 Zone



- All marijuana growing and processing must occur indoors, and business must employ odor control devices. This is critical, as marijuana flowers emit strong odors that are unpleasant to many people. This would require the business to limit marijuana growing and processing to indoors, and to install air filters that prevent odors from escaping the building.

- The building and site must be secure, including non-climbable perimeter fencing and electronic entry gates with card systems, approved by the Police Department.
- The site must have alarm and monitoring systems, approved by the Police Department.

Owner/Operator Restrictions (p. 10). This section addresses when an owner/operator can be denied an operating permit for a marijuana business. An applicant can be denied an operating permit when:

- A marijuana business permit was revoked in another City or elsewhere in Firebaugh;
- The applicant makes false statements in their application;
- The applicant has been convicted of a serious or violent offense;
- The applicant has been convicted of offenses in Business and Professions Code (Section 19323);
- The applicant has been convicted of a misdemeanor involving moral turpitude;
- The applicant has been convicted of crimes involving controlled substances.

The City's discovery of these issues would normally occur during the Police Department's background check process.

Registration and Responsible Party Designation (pp. 11-12). This section specifies requirements for registration of the operator, including information that must be provided, fees to be paid, contact information, etc.

Location of Use (p. 12). Clarifies that all operations are restricted to the business site.

Employee Permits (pp. 13-14). This section establishes a system by which all employees at a marijuana business must be reviewed (background checks by the Police Department) and registered. This section:

- Lists information required of each employee;
- Establishes that the City can collect fees to cover processing of each employee permit;
- Lists provisions for conducting background checks;
- Employee permits must be renewed every year;
- Establishes grounds for denial of a permit.

Suspension and revocation of registration or employee permit (pp. 14-16). This section provides a process by which a business or a specific employee can be suspended. Among other things, this section provides a process for suspension of permit for business or employee registration for:

- Breaking the law
- Excessive calls for service
- Creating a public or private nuisance

Revocation of a business permit is by the Planning Commission, following investigation by City staff.

Employee permits can be revoked by the Police Chief

Abandonment (p. 16). This section provides that a marijuana business that has stopped operations for 90 days cannot be resumed – unless they apply for a new permit.

Fees and taxes (pp. 16-18). This section establishes that marijuana businesses are subject to City fees, including business license fees, regulatory license fees (to cover the costs of the City inspecting, enforcing and otherwise regulating the business) and revenue tax (an assessment to raise revenues for the privilege of doing business in the City).

Because the revenue tax is considered a tax, it would have to be approved by the voters of Firebaugh. If the ordinance were approved, the City Council would likely place this tax as a measure on the next ballot.

If the City Council adopts the ordinance, the City will need to adopt regulatory license fees. This would probably be completed by a consultant with expertise in such matters, at the direction of the City Council.

Record keeping (p. 18). This section establishes requirements for marijuana businesses to keep proper records for City inspection.

Access to records (p. 18). This section requires that records of a marijuana business must be accessible to City employees for inspection at any time.

Inspection (p. 18). This section requires businesses to be open for inspection by the City at any time.

Indemnification (p. 18). The City can require the business to indemnify the City against legal challenges. This would be important in the event the federal government decides to prosecute jurisdictions that allow marijuana use/processing. In this event, the applicant would be required to cover legal costs that are incurred by the City.

Insurance (pp. 18-19). The City can require the business to supply evidence of insurance.

Violations: Enforcement (p. 19). This section establishes rules for the City to enforce the ordinance in the event that violations occur.

Severability (p. 19). This section provides that if any portion of the ordinance is found invalid, other portions will continue in effect.

Judicial review (p. 19). This section provides that any decision made under the Ordinance can be legally reviewed if a request is filed within 90 days of the decision.

Section 3 – Definitions (p. 20). This section establishes definitions for terms that are used in the ordinance, including:

"Applicant"

"Commercial Marijuana Operation" or "Marijuana Operation"

"Commercial Marijuana Permit"

"Employee Permit"

"Non-Commercial and Recreational Marijuana Activity"

"Marijuana Business Operator"

“Marijuana Operation Business Owner”

“Marijuana Ordinance”

"Marijuana Premises" or “Site”

“Marijuana Premises Owner”

"Police Chief".

“Registration”

“Responsible Party”

Conclusion

As noted previously, the ordinance would allow commercial marijuana cultivation, testing and manufacturing in the M-2 zone only, subject to a Conditional Use Permit and special operating standards. No dispensaries or delivery businesses (that deliver within Firebaugh) would be allowed.

The Planning Commission conducted a public hearing on the proposed ordinance on October 23, 2017 and voted unanimously to recommend adoption of the ordinance. No members of the public spoke on the ordinance.

It is recommended the City Council conduct a public hearing, receive any testimony that is offered, and vote to adopt the attached ordinance.

ATTACHMENTS

Ordinance 17-03

ORDINANCE NO. 17-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ESTABLISHING REGULATIONS WITHIN THE FIREBAUGH MUNICIPAL CODE TO IMPLEMENT THE ADULT USE OF MARIJUANA ACT, INCLUDING ALLOWING COMMERCIAL CANNABIS OPERATIONS IN THE M-2 (HEAVY INDUSTRIAL) ZONE, SUBJECT TO A CONDITIONAL USE PERMIT, AND ESTABLISHING DEVELOPMENT STANDARDS FOR SUCH OPERATIONS.

WHEREAS, on November 8, 2016, Proposition 64 (Adult Use of Marijuana Act (AUMA)) was approved by California voters for the purpose of providing a comprehensive regulatory framework for the licensing, control, and taxation of non-medical commercial cannabis related businesses in California; and

WHEREAS, AUMA expressly protects a City's local licensing practices, zoning authority, and other local actions taken under the City's constitutional municipal and police powers for the purpose of commercial cannabis activities; and

WHEREAS, the City Council recognizes, upon consultation with law enforcement, that supply chains for commercial cannabis and marijuana-related products as they currently exist, in the absence of state and local regulatory schemes, can and do benefit criminal elements to the detriment of residents of the State of California, the County of Fresno, and very likely the City of Firebaugh, without full regard for public safety, health and welfare issues; and

WHEREAS, the City Council recognizes the individual freedom and privacy interests that surround the choice of what to take into one's body, following consultation with one's chosen health care providers, and for one's own health-related purposes, and in a manner that is responsible in its impacts on others in the community, including children, and

WHEREAS, the City Council also recognizes its obligation to provide guidance on appropriate community standards of health, safety, and welfare, and where appropriate, to protect residents – especially residents of particularly vulnerable populations like children – from violation and abuse of those community standards; and

WHEREAS, the City Council desires to establish reasonable land use controls and reasonable regulations on the operation of commercial cannabis related businesses which are intended to operate in conjunction with the zoning and land use regulations of the City of Firebaugh, and which are intended to address the negative impacts, nuisance impacts, and criminal impacts of unregulated cannabis-related businesses, and

WHEREAS, commercial cannabis related businesses will be subject to the zoning and land use regulations of the zoning district in which such businesses establish and operate, as set forth in Chapter 25 of the Firebaugh Municipal Code, and as otherwise established by the City, and

WHEREAS, the City Council finds that the activities permitted under this ordinance are consistent with and implement the goals and policies of the Firebaugh General Plan, and

WHEREAS, the City Council finds that the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) per Section 15061 (b) (3) of the CEQA Guidelines which stipulate that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

THE CITY COUNCIL OF THE CITY OF FIREBAUGH DOES ORDAIN AS FOLLOWS:

Section 1. Section 25-29.2 (Industrial Zones: Permitted Uses) of the Firebaugh Municipal Code is hereby amended:

<u>Use</u>	<u>Zone</u>	
	<u>M-1 Zone</u>	<u>M-2 zone</u>
1. Assembling, cleaning, manufacturing, processing repairing or testing of products, conducted within an enclosed structure, or within a screened outdoor storage area, except for the following uses listed under 1a through 1k, which are permitted only in the M-2 zone by Conditional Use Permit	P	P
a. Drop forges	-	CUP
b. Fertilizer manufacturing	-	CUP
c. Animal processing, including slaughterhouses, reduction, rendering and glue manufacturing	-	CUP
d. Petroleum products manufacturing, processing and storage, including oils, gasoline, natural gas, paints and tar	-	CUP
e. Incinerators		CUP
f. Metal industries (ores, reduction, refining, smelting and alloying)		CUP
g. Paper and paper product manufacturing	-	CUP
h. Textile mills	-	CUP
i. Chemical manufacturing	-	CUP
j. Rubber manufacturing	-	CUP
2. Assembling, cleaning, manufacturing, processing, repairing or testing of products not listed under 1a through 1b that are conducted primarily outdoors.	CUP	CUP
3. Agricultural services and industries, including the following:		
a. Food and dairy processing	P	P
b. Canneries	P	P
c. Cold storage facilities	P	P
d. Crop cultivation	P	P
e. Grain storage and processing	P	P
<u>f. Marijuana cultivation, manufacturing, testing, transportation and distribution</u>	<u>-</u>	<u>CUP, subject to standards contained in Section 25-41-13</u>
g. f. Nurseries	P	P
h. g. Packing houses	P	P
i. h. Veterinary services, livestock and large animals, including animal boarding	P	P
j. i. Animal sales yards	CUP	P
k. j. Agricultural exhibits, including sales, displays, large assembly of people and livestock.	P	P
4. Automobile oriented uses, including auto repair, tire shops, painting, upholstery, etc.	P	P

Use	Zone	
	M-1 Zone	M-2 zone
5. Concrete batch plants, processing of minerals, and aggregate and related materials, sand and gravel storage	CUP	P
6. Dwelling for a caretaker or security guard on the site of an approved use.	CUP	CUP
7. Fuel dealer and service stations	CUP	P
8. Airports, heliports/helipads	CUP	CUP
9. Farm supply stores	P	P
10. Lumber yards	P	P
11. Kennels	P	P
12. Mini storage facilities and storage buildings	P	P
13. Offices	P	P
14. Retail uses conducted as part of, and incidental to an established manufacturing operation (such as a candy store on the site of a candy manufacturing operation)	P	P
15. Research and development operations, including laboratories.	P	P
16. Recycling collection and processing facilities.	P	P
17. Salvage and wrecking facilities and junk yards	-	CUP
18. Towing services	P	P
19. Trucking, Transportation and distribution	P	P
20. Truck stops	CUP	CUP
21. Upholstery shops	P	P
22. Vehicle storage	P	P
23. Warehousing and wholesaling	P	P
24. Equipment rental and sales yards including farm equipment rental and sales	P	P
25. Building contractor offices and yards	P	P
26. Miscellaneous uses, including:		
a. Accessory uses on the site of a permitted use or conditionally-permitted use	P	P
b. Parking facilities on separate lots	P	P
c. Communications equipment buildings and structures (including wireless telecommunications facilities), public utility service yards, gas regulator stations, pumping stations, storm drainage reservoirs, public water wells, electric distribution substations and transmission line structures.	CUP	CUP
d. Private fueling stations located on-site with a permitted or conditionally permitted use.	P	P
e. Other uses determined to be similar in nature and intensity to those permitted in that particular zone, as determined by the city planner.	P	P
f. Other uses determined to be similar in nature and intensity to those conditionally permitted in that particular zone, as determined by the city planner.	CUP	CUP

Section 2. Subsection 25-41.13 is added to Chapter 25-41, as follows:

25-41.13 Marijuana cultivation, manufacturing, testing, transportation and distribution

a. Operational Requirements and Restrictions

Marijuana cultivation, manufacturing, testing, transportation and distribution businesses and activities are prohibited throughout the City of Firebaugh except where permitted by this title. Where permitted, such uses are subject to the following standards and requirements:

1. Register of Employees. The Operator shall maintain a current register of the names of persons required to have Employee Permits. The register shall be available to the Police Chief at all times immediately upon request.
2. Signage. There shall be no signage or markings on the Premises, or off-site, which in any way evidences that Marijuana Operations are occurring on the property. Interior building signage is permissible provided the signage is not visible outside of the building.
3. Marijuana Consumption. No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Marijuana Operations. Adequate signage of this prohibition shall be displayed throughout the facility.
4. Alcoholic Beverages. No Marijuana Operation shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the Marijuana Operations.
5. Transportation. Transportation shall only be conducted according to activity permitted by State law.
6. Deliveries. There shall be no deliveries from the premises except to a State or local licensed or permitted cannabis business.
7. Non-Commercial Marijuana Activity. No Non-Commercial or Recreational Marijuana Activity shall occur on the premises.
8. Retail Sales. The retail sale of marijuana is expressly prohibited.
9. Public Access. There shall be no public access to the premises.
10. Minors. It shall be unlawful for any Operator, Responsible Party, or other person in charge of any Marijuana Operations to employ any person who is not at least eighteen (18) years of age, or any older age if set by the State.
11. Distance separation from schools. Marijuana Operations shall comply with the distance separation requirements from schools as required by State law.
12. Hours of Operation. Commercial Marijuana Operations shall be allowed to operate per the requirements of the underlying zone district and subject to the City's noise and nuisance ordinances.

13. Building and Related Codes. The Marijuana Operation shall be subject to the following requirements:

- (a) The Premises in which the Marijuana Operations occur shall comply with all applicable local, state and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the Building Official of the City. The Operator shall obtain all required building permits and comply with all applicable City standards.
- (b) The Responsible Party shall ensure that the Premises has sufficient electrical load for the Marijuana Operations.
- (c) Butane and other flammable materials are permitted to be used for extraction and processing, provided the Operator complies with all applicable fire and building codes and any other requirements of the Firebaugh Fire Department to ensure the safety of that operation.
- (d) The Operator shall comply with requirements pertaining to use of commercial kitchen facilities for the Marijuana Operations.
- (e) The Operator shall comply with all environmental regulations pertaining to the Marijuana Operations, including the use and disposal of water and pesticides, and shall otherwise use best practices to avoid environmental harm.

14. Odor control. Marijuana Operations shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the facility that is distinctive to its operation is not detected outside the Premises, outside the building housing the Marijuana Operations, or anywhere on adjacent property or public rights-of-way. As such, Marijuana Operations must install and maintain the following equipment or any other equipment which the City's Building Official determines has the same or better effectiveness:

- (a) An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or
- (b) An air system that creates negative air pressure between the cannabis facility's interior and exterior so that the odors generated inside the cannabis facility are not detectable outside the cannabis facility.

15. Secure Building. All Marijuana Operations shall occur entirely inside of a building that shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and entirely opaque. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures (including, without limitation, commercial greenhouse structures) and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid non-opaque material provided other security measures exist to ensure that the Marijuana Operation cannot be seen, heard or smelled beyond the property line. The precise building construction and material to be used shall be identified and provided to the City prior to construction and provided with the Registration.

16. Premises Security. The following security conditions shall apply:

- (a) Alarm System (both perimeter, fire and panic).
- (b) Remote monitoring of alarm systems.

- (c) Perimeter lighting systems (motion sensor) for after-hours security.
- (d) Perimeter fencing with constantina wire and lighting around the property perimeter.
- (e) Use of drive gates with card key access or similar to access the facility.
- (f) Entrance areas to be locked at all times areas, and under the control of a designated Responsible Party.
- (g) Use of access control systems to limit access to grow and processing areas.
- (h) Camera systems (360 degree perimeter, interior monitoring of all access points of the site from the interior) minimum 5 megapixel in resolution.
- (i) All security systems at the site are attached to an uninterruptable power supply that provide 24 hour of power.
- (j) 24 hour armed security patrols by a recognized security company licensed by the California Department of Consumer Affairs or otherwise acceptable to the Police Chief.
- (k) All current contact information regarding the security company shall be provided to the Police Chief.
- (l) Law enforcement access to all security systems.
- (m) IP access for remote monitoring of security cameras by the Police Department.
- (n) Any and all video or audio tape recordings made for security or other purposes shall be marked with the date and time made and shall be kept, in an unaltered state, for a period of thirty (30) days and must be made available to any law enforcement agency for duplication upon demand. In addition, upon request by any law enforcement agency, the Responsible Party shall duplicate the records for that agency.
- (o) Hardened bullet-resistant windows for exterior windows as part of any new construction.
- (p) Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.
- (q) Electronic track and trace systems for product.
- (r) Premises may be audited by the City for compliance on a quarterly basis.
- (s) City may conduct random spot checks of product inventories, and cash, where applicable.
- (t) State of the art network security protocols and equipment need to be in place to protect computer information.
- (u) The foregoing requirements shall be approved by the Police Chief prior to commencing operations. The Police Chief may supplement these security requirements once operations begin.

17. Confidentiality Statement

- (a). The City, Police Chief, Police Department employees, and any other law enforcement official acting under the direction of the Police Chief who access the premises and video and/or audio feeds or recordings of the premises ("Recipients") may receive or be provided with confidential information relating to the Marijuana Operations, which may include the following: data, records, plans, concepts and matters relating to customers, vendors and tenants, agreements, business records including, without limitation, business records relating to intellectual property, marketing and sales plans, pricing and other business strategies (whether or not implemented); research and development plans or projects; computer materials such as programs, instructions and printouts; software, including, without limitation, any source codes, object codes, algorithms and other engineering information; formulas; business improvements and processes; information regarding the skills and compensation of executives; intellectual property rights and strategies including, without limitation, any work on patents, trademarks or tradenames, prior to any filing or the use thereof in commerce; financing terms and strategies; in each case together with all reports, summaries, studies, notes, compilations, analyses and other documentation which contain or otherwise reflect or are generated from any of the foregoing, and in each case regardless of the media in which the information is maintained (collectively "Confidential Information").
- (b) To the extent Confidential Information is acquired without a warrant from access to the premises and video and/or audio feeds or recordings as authorized under this section, the Recipients shall, to the maximum extent possible, keep such Confidential Information confidential and not disclose the Confidential Information to any third parties. Provided, however, that the Recipients may disclose Confidential Information to the State or Federal courts in California in connection with any criminal law enforcement action against the Premises owner, Operator, Responsible Party or business (including its employees, contractors and agents conducting business within the premises) arising from or related to the Marijuana Operations, but only to the extent it is necessary and relevant to such criminal prosecution, and the Recipients shall file any such documents under seal to the extent they contain any Confidential Information.

Notwithstanding the foregoing, City may disclose Confidential Information:

- (1) As may be required by the California Public Records Act or pursuant to a civil subpoena, provided however, the City shall notify the Operator and provide the Operator with a reasonable opportunity to obtain a protective order before disclosing the Confidential Information.
- (2) In connection with any City enforcement, proceeding relating to compliance with the City's Municipal Code and this section, but only to the extent the Confidential Information is relevant to the proceeding.

18. Deliveries of Supplies and Transportation of Product. The following rules apply to deliveries and transportation:

- (a) Deliveries to the Premises of supplies shall only occur as provided for in diagrams and floor plans on file with the City as part of the Registration process. Delivery vehicles shall not have any markings indicating that deliveries are being made to a Marijuana Operation.
- (b) The transportation of marijuana samples and product to and from the Premises shall be in unmarked vehicles with no indication that the vehicles are transporting marijuana samples and products. The Responsible Party shall stagger transportation times, vary routes from the facility, and take other security measures as requested by the Police Chief.

19. Premises Maintenance. The Business Owner, Operator, and all Responsible Parties shall continually maintain the Premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety and general welfare of employees, patrons, surrounding properties, and the general public. The Premises or Commercial Marijuana Operation shall not be maintained in a manner that causes a public or private nuisance.

b. **Owner/Operator Restrictions.** No Business Owner or Operator shall open or operate a Marijuana Operation in the City if any of the following exist:

1. The Business Owner or Operator has been issued a local or state permit related to Marijuana Operations at any other location in California, or another state, and that permit was suspended or revoked, or the Business Owner or Operator has had disciplinary action relating to the permit.
2. The Business Owner or Operator has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the Registration.
3. The Business Owner or Operator, or any Responsible Person, has been:
 - (a) Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or
 - (b) Convicted of any of the offenses listed in Business and Professions Code section 19323; or
 - (c) Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or
 - (d) Convicted of a crime involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act; or
 - (e) Has engaged in misconduct related to the qualifications, functions or duties of a permittee.

A conviction within the meaning of this subsection means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

4. The Business Owner or Operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
5. The Business Owner or Operator is under eighteen (18) years of age, or any older other age set by the State.
6. The Marijuana Operation does not comply with the zoning ordinance standards of the City of Firebaugh or the development standards set forth in this Title.
7. The required annual business license fee, annual regulatory fee or revenue-raising fee has not been paid.

c. **Registration and Responsible Party Designation.** Any person desiring to open a Commercial Marijuana Operation in the City shall first comply with the requirements of this subsection.

1. **Registration.** Not less than sixty (60) days prior to the planned opening of any Marijuana Operation in the City, the Operator shall register their business with the Firebaugh Police Department and provide information on a form approved by the Police Chief to ensure compliance with this Section. Within

thirty (30) days of Registration, the Police Chief shall inform the Operator whether it has satisfied the requirements of this subsection, in which case the Registration process shall be completed and the Business Owner shall be deemed to have a permit to operate (Commercial Marijuana Permit). If the requirements of this subsection are not satisfied, the Registration shall be incomplete and Police Chief shall inform the Operator of the reasons for non-compliance, at which time the Operator will have an opportunity to correct any deficiencies. The Police Chief shall have thirty (30) days to review any new information and make a determination. No Marijuana Operation shall commence until the Registration is complete.

2. **Registration Fee.** The Business Owner shall pay a fee set by Resolution of the City Council to cover the costs of Registration.
3. **Registration Information and Responsible Party Designation.** The information required to be submitted under this subsection shall be submitted with a certification under penalty of perjury that all of the information is true and correct, and shall include at a minimum the following:
 - (a) The full name, present address, and telephone number of the Premises Owner, Business Owner, Operator, and Responsible Parties.
 - (b) Date of birth of the Business Owner, Operator, and Responsible Parties.
 - (c) Tax identification number of the Business Owner, Operator, and Responsible Parties.
 - (d) The address to which notices relating to the Registration are to be mailed.
 - (e) Previous addresses for the five (5) years immediately preceding the present of the Business Owner, Operator, and Responsible Parties.
 - (f) The height, weight, color of eyes and hair of the Business Owner, Operator, and Responsible Parties.
 - (g) Photographs for identification purposes (photographs shall be taken by the Police Department) of the Business Owner, Operator, and Responsible Parties.
 - (h) All business, occupation, or employment of the Business Owner, Operator, and Responsible Parties for the five (5) years immediately preceding the date of submittal of the registration form.
 - (i) The Marijuana Operation business history of the Business Owner, Operator, and Responsible Parties, including whether the Business Owner, Operator, and Responsible Parties while previously operating in this or another city, county or state, has had a marijuana related license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation.
 - (j) Complete property ownership and lease details, where applicable. If the Business Owner is not the legal owner of the property, the registration form must be accompanied with a notarized acknowledgment from the owner that Marijuana Operations will occur on his or her property.
 - (k) A descriptive business plan for the Marijuana Operation, including a detailed list of all Marijuana Operations proposed to occur on the Premises.
 - (l) A diagram and floor plan of the entire premises, denoting all uses of areas proposed for Marijuana Operations, including, but not necessarily limited to, cultivation, processing, manufacturing, testing,

transportation, deliveries, and storage. The diagram and floor plan need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

- (m) The name or names of the person or persons having the management or supervisory responsibilities for the Marijuana Operations. The Operator shall designate one or more Responsible Parties, one of which, shall at all times, be available as a point of contact for the City, 24 hours per day. The contact information and schedule of the Responsible Parties shall be provided to the Police Chief and updated within two (2) hours of any changes.
- (n) Whether the person or persons having the management or supervisory responsibilities for the Marijuana Operation have been convicted of a crime, the nature of such offense, and the sentence received therefore.
- (o) The names of all employees, independent contractors, and other persons who will work at the Marijuana Operation or be involved in transportation/delivery related services for the Marijuana Operation.
- (p) The proposed security arrangements for insuring the safety of persons and to protect the premises from theft.
- (q) An accurate straight-line drawing prepared within thirty (30) days prior to the application depicting the building and the portion thereof to be occupied by the Marijuana Operation and the property line of any school as set forth in the Operational Requirements.
- (r) Authorization for the City, its agents and employees to seek verification of the information submitted.

- 4. Criminal History Records Check. In addition to the registration information, the Business Owner, Operator, and Responsible Parties shall submit to a fingerprint-based criminal history records check conducted by the Firebaugh Police Department
- 5. Changes in Information. Except as may otherwise be provided, the information provided in this subsection shall be updated upon any change within ten (10) days.

d. Location of Uses. The Commercial Marijuana Operation permitted by this section shall only be allowed in the locations designated on the diagram and floor plan of the Premises submitted with the Registration. The Commercial Marijuana Operation shall not operate at any place other than the address of the Marijuana Operation stated in the Registration.

e. Employee Permits.

- 1. Permit Required. Every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Marijuana Operation shall obtain an Employee Permit. It shall be the duty of the Operator to ensure that Employee Permits are obtained from the Police Department prior to the employee or independent contractor commencing work.
- 2. Application. Each employee and independent contractor shall be required to provide the following information under penalty of perjury, so that the Police Department can perform a background check:
 - (a) Name, current resident address, and telephone number.

- (b) Date of birth.
 - (c) Tax identification number.
 - (d) Height, weight, color of eyes, and hair.
 - (e) Photographs for identification purposes (photographs shall be taken by the Police Department).
 - (f) Fingerprinting by the Police Department.
 - (g) Such other identification and information as deemed necessary by the Police Chief.
 - (h) Authorization for the City, its agents and employees to seek verification of the information contained within the application.
3. **Application Fees.** Every application for an Employee Permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution of City Council. This fee shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies. The fee shall include an amount to cover the costs of fingerprinting, photographing, background checks as well as general review and processing of the application.
 4. **Investigation and Action on Application.**
 - (a) Upon the filing of a properly completed application and the payment of the fee, the Police Chief shall conduct an investigation of the application, including a background check. All applicants shall be required to submit to a fingerprint-based criminal history records check conducted by the Firebaugh Police Department.
 - (b) After, the background checks and investigation are complete, and in no case later than thirty (30) days after receipt of a properly completed application, the Police Chief shall either approve or deny an Employee Permit. At the discretion of the Police Chief, Employee Permits may be conditionally approved pending the background investigation.
 5. **Term of Permit and Renewals.** Employee Permits issued under this section shall expire one (1) year following the date of issuance. Applications for renewal shall be made at least forty-five (45) days prior to the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in this section. When made less than forty-five (45) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on similar to applications for permits, except that the Police Chief shall renew annual permits for additional one-year periods if the circumstances and information provided with the initial application have not materially changed.
 6. **Grounds for Denial of Employee Permit.** The grounds for denial of an Employee Permit shall be one or more of the following:
 - (a) The applicant has been issued a local or state permit related to Marijuana Operations at any other location in California, or another state, and that permit was suspended or revoked, or the applicant has had disciplinary action relating to the permit.
 - (b) The applicant has been:
 - (1) Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or

- (2) Convicted of any of the offenses listed in Business and Professions Code section 19323; or
- (3) Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or
- (4) Convicted of a crime involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act; or
- (5) Has engaged in misconduct related to the qualifications, functions or duties of a permittee.
- (c) The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
- (d) The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit.
- (e) An applicant is under eighteen (18) years of age, or any older age set by the State.
- 7. Notice of Decision and Final Action. The Police Chief shall cause a written notice of his or her determination on the issuance or denial of an Employee Permit to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid. The Police Chief's decision on an Employee permit shall be final.

f. Suspension and Revocation of Registration or Employee Permit.

- 1. Registration. The Planning Commission may suspend or revoke the Registration of a Commercial Marijuana Operation when any of the following occur.
 - (a) The Business Owner, Operator, or Responsible Party, or their agents have committed any one or more of the following acts:
 - (1) any act which would be considered grounds for not opening in the first instance;
 - (2) engages in or permits misconduct substantially related to the qualifications, functions or duties of the Business Owner, Operator, or Responsible Party;
 - (3) conducts the business in a manner contrary to the health, safety, or welfare of the public;
 - (4) fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the Premises, traffic control problems, or obstruction of the operation of another business.
 - (b) The Marijuana Operation is conducted in violation of any provision of this section or any local or State law, statute, rule or regulation relating to the Marijuana Operation.
 - (c) The Marijuana Operation is conducted in such a manner as to create a public or private nuisance.
 - (d) The Marijuana Operation results in excessive calls for public safety services (police and fire). Excessive calls for service shall mean calls for service, which substantially exceed the average calls for service generated by similar businesses in similar areas. During any six-month period, a ten percent (10%) excess in calls for service will be presumed to be a violation of this condition.

- (e) Failure to pay the Regulatory Fee or Revenue Raising Fee required by this section.
- 2. Employee Permit. The Police Chief may suspend or revoke an Employee Permit when the permittee or the employee has committed any one or more of the following acts:
 - (a) Any act which would be considered a ground for denial of the permit in the first instance.
 - (b) Violates any other provision of this section or any local or State law, statute, rule or regulation relating to his or her permitted activity.
 - (c) Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.
 - (d) Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
 - (e) Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.
 - (f) Violates or fails to comply with the terms and conditions of the permit.
- 3. Procedures for Revoking Registration. For Registration, the procedures for revoking Conditional Use Permits shall be utilized.
- 4. Procedures for Revoking Employee Permits. Prior to suspension or revocation of an Employee Permit, the Police Chief shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid. Any permittee aggrieved by the decision of the Police Chief in suspending or revoking an Employee Permit shall have no appeal rights and the Police Chief's decision shall be final, subject to judicial review as set forth in this section.
- 5. Immediate Suspension. The Police Chief may immediately suspend or revoke a Registration and an Employee Permit without notice or a hearing, subject to the appeal rights set forth herein, under the following circumstances:
 - (a) The Business Owner or Operator is convicted of a public offense in any court for the violation of any law, which relates to the Marijuana Operation, or in the case of an Employee Permit, the employee is convicted of a public offense in any court for the violation of any law, which relates to the permit.
 - (c) The Police Chief determines that immediate suspension is necessary to protect the public health, safety, and welfare of the community. The Police Chief shall articulate the grounds for the immediate suspension in writing, and the suspension shall only be for as long as necessary to address the circumstances, which led to the immediate suspension.
- 6. Effect of Denial or Revocation. When the Planning Commission has revoked a Registration, or the City Council upon appeal, or the Police Chief shall have denied or revoked an Employee Permit, no new registration and no new application for an Employee Permit shall be accepted, and no Registration shall

be deemed complete or Employee Permit issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the Registration or Employee Permit.

- g. Abandonment.** In addition to the suspension or revocation of a Registration, a Registration shall be deemed abandoned if Marijuana Operations cease for a period of more than ninety (90) consecutive days. Before restarting operations, a new Registration shall be secured. The 90 day period shall be tolled during periods of force majeure, which shall be defined as follows: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of the permittee.
- h. Fees and taxes.** All Marijuana Operations shall pay applicable fees and taxes, which may include one or more of the following.
1. **Business License Fee.** The Business Owner shall, at all times, maintain a current and valid business certificate and pay all business taxes required by Chapter 4, of the Firebaugh Municipal Code pertaining to Business Licensing.
 2. **Regulatory License Fee.** The Business Owner shall pay an annual regulatory license fee ("Regulatory Fee") to cover the costs of anticipated enforcement relating to the Marijuana Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Marijuana Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.
 3. **Revenue Raising Fee.** An annual revenue-raising fee ("Revenue Fee") for the privilege of having the right to operate in the City.

Revenue Fee Finding

The City Council specifically finds that it is approving this Ordinance allowing Commercial Marijuana Operations to open in the City on the express understanding that the business will pay the Revenue Fee to the City as set forth herein, and that without the Revenue Fee, the City Council would not have adopted this Ordinance allowing Commercial Marijuana Operations to open in the City. By opening a Commercial Marijuana Operation in the City, the Premise Owner, Business Owner, Operator, and all Responsible Parties agree, that if, the Revenue Fee is challenged by any one of them, or a third party and set aside, the business must cease operations.

- (a) **Amount of Fee and Terms of Payment.** The Revenue Fee shall be an annual fee of twenty-five (\$25.00) per square foot for the first 3,000 square feet and ten dollars (\$10.00) per square foot for the remaining space utilized in connection with each Commercial Marijuana Operation. The square footage calculation shall be determined by including all portions of the Premises under the control of the Business Owner and deducting therefrom driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Marijuana Operation (such as a janitorial closet).

If more than one Commercial Marijuana Operation operates on the Premises, each Business Owner shall be responsible for paying the fee. The Fee shall be payable in advance, in not less than quarterly installments, with the first quarterly payment due prior to opening. The first payment shall be prorated so that future payments coincide with calendar year quarters, but in no event shall the

first payment be less than the equivalent of one full quarterly payment. Except for the first quarterly payment, all quarterly payments shall be received by the City before the end of the quarter.

- (b) **Alternative Voter Approved Tax.** If the voters of the City approve a tax rate, which is equivalent to the Revenue Fee, the Business Owner shall pay the tax in lieu of the Revenue Fee once the City begins to receive the tax revenue.
- (c) **Accounting.** The Business Owner shall maintain accounting books governing the entire operation of the Premises, in accordance with generally accepted accounting principles or other methods approved by the Finance Director or his/her designee. The books shall, at a minimum, contain information in sufficient detail, as determined by the Finance Director or his/her designee, necessary for the City to verify payment of the Revenue Fee.

The books should be open for inspection by the Finance Director or his/her designee during regular business hours Monday through Thursday, 7 a.m. to 6 p.m., excluding City recognized holidays, and at all other times within a reasonable time upon request. The books and supporting data shall be maintained for not less than a period of five (5) years following the calendar year in which they were generated.

The books, documents, records and accounts relating to the Revenue Fee shall be audited at the end of the business fiscal year by a certified public accountant. The report of such accountant and all work papers utilized in the preparation of such audit shall be submitted to the Finance Director. The Finance Director shall review the report and work papers and may require any further information from the Business Owner. The Finance Director may submit such documents and information to a certified public accountant selected by the City for review.

The City may require, at any time, an audit of the books, documents, records and accounts relating to the Revenue Fee by a certified public accountant. Such audit shall be in addition to the annual audit. Any inaccuracy found in the revenues previously reported to the City shall be adjusted accordingly. If such additional audit shall disclose an inaccuracy of greater than two percent (2%) error with respect to the revenues reported by the Business Owner for the period of the audit, the cost, thereof, shall be paid to the City, by the Business Owner. Otherwise, the cost of the audit shall be borne by the City.

Any information obtained pursuant to the provisions of this subsection shall be deemed, confidential and shall not be subject to public inspection except in connection with the enforcement of the provisions of this subsection, as may be required to comply with the Public Records Act, or pursuant to the order of any court or administrative agency of competent jurisdiction.

- i. **Record Keeping.** The Responsible Party shall make and maintain complete, accurate and legible records of the permitted Marijuana Operations evidencing compliance with the requirements of this section, which shall be subject to audit in accordance with this section.
- j. **Access to records.** Each Marijuana Operation shall allow the Police Chief and/or Finance Director to have access to the books, records, accounts, and any and all data relevant to its Marijuana Operation for the purpose of conducting a financial audit or diversion examination. Books, records, accounts, and any and all relevant data will be produced no later than 24 hours after receipt of the Police Chief's written request(s).
- k. **Inspection.** Marijuana Operations shall be open for inspection by any City law enforcement officer or City code enforcement officer at any time the Marijuana Operation is operating, at any other time upon responding to a call for service related to the property where the Marijuana Operations is occurring, or otherwise upon reasonable notice. Recordings made by security cameras at any Marijuana Operation shall be made

immediately available to the Police Chief upon verbal request. No search warrant or subpoena shall be needed to view the recorded materials.

l. Indemnification. In authorizing Commercial Marijuana Operations under this section, the City makes no guarantees or promises as to the lawfulness of the approved activity under State or Federal law, and the Business Owner, Operator and all Responsible Parties are obligated to comply with all applicable laws. To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to the adoption of this Ordinance or the operation of any Commercial Marijuana Operation approved pursuant to this Ordinance or under State or federal law. The Business Owner, Operator and all Responsible Parties shall defend, hold harmless, release, and indemnify the City, its agents, officers, and employees, from any liability associated with the approved use or adverse determinations made by the State or Federal government. An adverse determination could include cessation of operations.

The Business Owner agrees to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to Commercial Marijuana Operations operating under the authority of this Ordinance. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the permittee of its obligation hereunder. If requested by the City Attorney, the Business Owner shall execute an agreement memorializing the requirements of this subsection.

m. Insurance. The Business Owner shall at all times carry a comprehensive general liability policy in the minimum amount of Five Million Dollars (\$5,000,000) combined single limit policy, and for automobiles, a comprehensive automobile liability policy in the minimum amount of Two Million Dollars (\$2,000,000), combined single limit, as shall protect the Business Owner and City from claims for such damages, and which policy shall be issued by an "A" rated insurance carrier. Such policy or policies shall be written on an occurrence form. The City Manager, in consultation with City's Risk Manager, may allow the Business Owner to obtain lesser amounts of insurance where multiple Business Owners are operating on the Premises, provided at all times the minimum insurance set forth herein is applicable to the Marijuana Operations.

The Business Owner shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its respective officers, agents, employees, and volunteers, as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination.

Coverage provided hereunder by the Business Owner shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

n. Violations: Enforcement.

- 1 Any person that violates any provision of this section shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.
- 2 Any use or condition caused or permitted to exist in violation of any of the provisions of this section shall be and is hereby, declared a public nuisance, and may be summarily abated by the City pursuant to the City of Firebaugh Municipal Code.

- 3 Any person who violates, causes, or permits another person to violate any provision of this section commits a misdemeanor.
- 4 The violation of any provision of this section shall be and is hereby, declared to be contrary to the public interest, and shall at the discretion of City, create a cause of action for injunctive relief.
- 5 In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this section may be subject to an administrative fine of up to one thousand dollars (\$1000.00) for each violation and for each day, the violation continues to persist.

o. Severability. The provisions of this section are hereby, declared to be severable. If any provision, clause, word, sentence, or paragraph of this section or of the Regulatory Permit issued pursuant to this section, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this section.

p. Judicial review. Judicial review of a decision made under this section or any actions taken pursuant to this section, may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6, which shall be applicable for such actions.

Section 3. Section 25-67.3 of the Firebaugh Municipal Code is hereby amended to add the following definitions:

25-67.3 Definitions

"Applicant" shall mean a person who is required to file an application for a permit under this section.

"Commercial Marijuana Operation" or "Marijuana Operation" shall mean any commercial marijuana activity allowed under the "Adult Use of Marijuana Act" (AUMA) and the implementing regulations, as AUMA and the implementing regulations may be amended from time to time, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

"Commercial Marijuana Permit" shall mean the blanket permit to operate deemed to have been granted upon completion of Registration.

"Employee Permit" shall mean the permit required under this section for every employee or independent contractor working at a Commercial Marijuana Operation or involved in transportation/delivery related services for a Commercial Marijuana Operation.

"Non-Commercial and Recreational Marijuana Activity" shall mean all uses not included within the definition of Commercial Marijuana Operation, including the personal use, cultivation, or consumption of marijuana, whether medical or recreational.

"Marijuana Business Operator" shall mean the Commercial Marijuana Operation Business Owner and any other person designated by the Marijuana Operation Business Owner as responsible for the day-to-day Marijuana Operations.

"Marijuana Operation Business Owner" shall mean the owner(s) of the Marijuana Operation. For corporations and limited liability companies, Business Owner means the President, Vice President, and any shareholder

owning a 10% or greater share of the corporation or company. For partnerships, Marijuana Operation Business Owner means all general partners and managing partners.

"Marijuana Ordinance" shall mean the ordinance adopting this section, and including the terms of this section, which may be commonly referred to as the City's "Commercial Marijuana Ordinance".

"Marijuana Premises" or "Site" shall mean the actual building(s), and/or designated units/suites, as well as any accessory structures, parking areas, or other immediate surroundings, and includes the entire parcel of property.

"Marijuana Premises Owner" shall mean all owners of the Premises where Marijuana Operations are occurring.

"Police Chief" shall mean the Police Chief of the City of Firebaugh or his or her designee.

"Registration" shall mean completion of the requirements of this section to open a Commercial Marijuana Operation in the City.

"Responsible Party" shall mean the Marijuana Operation Business Owner, Operator, manager(s), and any employee having significant control over the Marijuana Operations.

Section 4: This ordinance shall take effect thirty days after its adoption.

Section 5: The City Clerk is authorized and directed to cause this ordinance to be codified after its adoption.

Section 6: The City Clerk is further authorized and directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated in the City of Firebaugh within 15 days after its adoption. If a summary of this ordinance is published, then the City Clerk also shall cause a summary of the proposed ordinance to be published and a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five days prior to the Council's meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The City Attorney shall approve the summary.

The foregoing Ordinance No. 17-03 was introduced at a regular meeting of the City Council of the City of Firebaugh on the 6th day of November 2017, and was passed and adopted at a regular meeting of the City Council on the _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk

FIREBAUGH CITY COUNCIL

MEMORANDUM

Date: November 6, 2017
To: Firebaugh City Council
From: Karl Schoettler, Planning Consultant
Subject: Potential annexation

Summary

The City Council has expressed interest in annexing several parcels along Washoe Avenue, south of Nees Avenue. This memo outlines issues and tasks involved with such an action

Analysis

The City Council is interested in the potential to annex parcels that are situated along both sides of Washoe Avenue, on the southwest side of the community (see map 1). This area contains at least eight parcels with a total area of approximately 115 acres. Some of the parcels are developed with existing warehouses and dwellings; others are planted with field crops.

Annexation of the entire site is complicated by the fact that Firebaugh's Sphere of Influence (SOI) boundary runs down the middle of Washoe – as shown on the map. Parcels that are outside the SOI cannot be annexed (unless the SOI is amended to include the parcels).

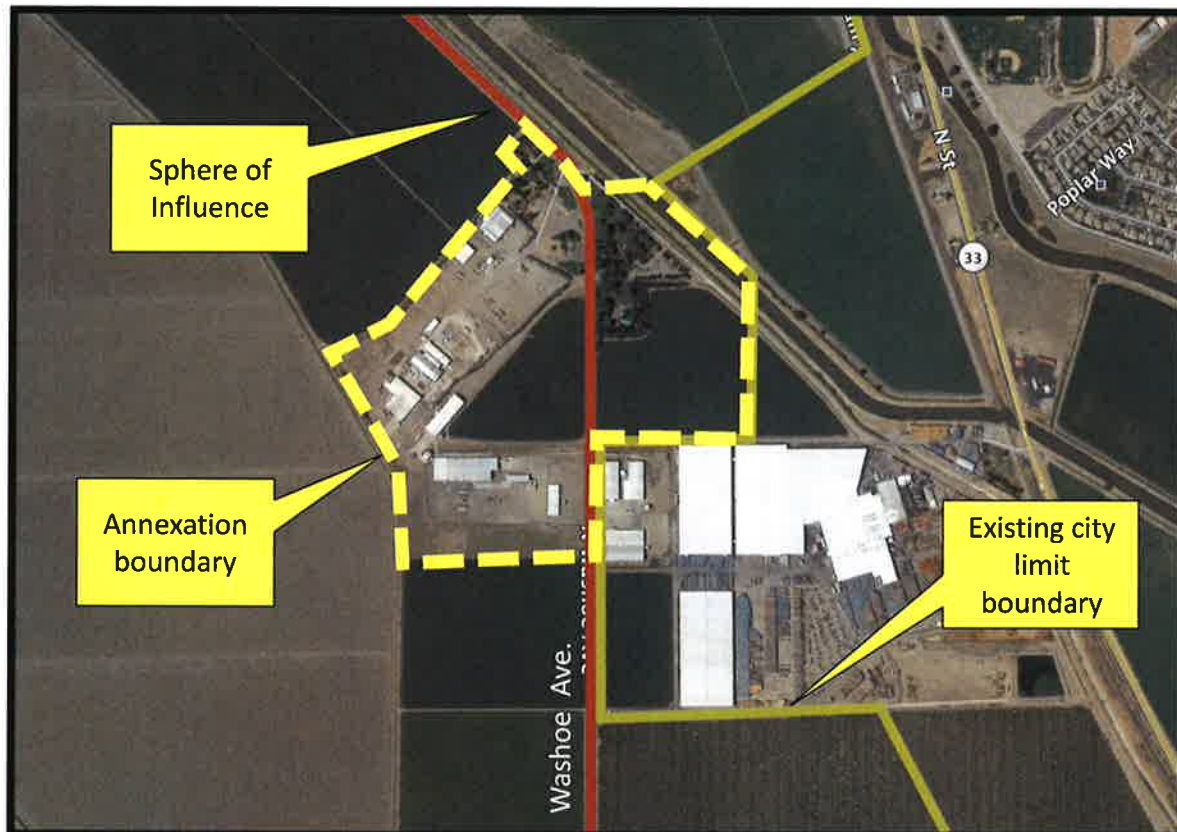
A further complication is that State law requires that whenever the Sphere of Influence is amended, the City must prepare a document called a Municipal Service Review (MSR). An MSR evaluates the service capabilities of all agencies that provide services within the Sphere of Influence of a City. In addition to the City, this typically includes irrigation districts, fire districts, Mosquito Abatement Districts, Memorial Districts and County Service Area districts, among others. The MSR (as well as the annexation and Sphere of Influence amendment) must be reviewed and approved by LAFCo (Fresno Local Agency Formation Commission).

In addition, amending the SOI also requires the City to update its General Plan – to address the new lands that are being brought under City control. For instance, the parcels along Washoe that are outside the SOI must be designated for a particular land use.

Finally, the City must prepare an environmental analysis of all of the foregoing actions – as required by CEQA (California Environmental Quality Act). Such an analysis must be circulated for public review and comment, before the City can take action on any matter.

Map 1: Project Area

Potential Firebaugh Annexation/SOI Amendment



Property Owner Consent

Annexation law requires that for this site, property owners owning at least 50% of the assessed value of the land being annexed must give written consent to the annexation – otherwise the annexation could be terminated.

Cost

The tasks required could generate significant costs. The following table is a rough estimate of tasks and associated costs.

<u>Task</u>	<u>Cost</u>	<u>Notes</u>
1. City gives staff the go ahead to start work		
2. City notifies and holds workshop with affected property owners. Assuming no significant opposition, work may continue.	\$1,000	Obtaining approval of property owners to annex is critical.
3. City updates General Plan as necessary (primarily land use designations for affected parcels, and circulation designations for affected roadways).	\$2,500	The General Plan must be updated to address areas that are being added to the Sphere of Influence, in particular the Land Use and Circulation Elements
4. City prepares administrative draft MSR under guidance from LAFCo.	\$15,000	
5. City prepares SOI amendment and annexation maps and legal descriptions.	\$2,000	
6. City prepares environmental analysis (likely an amendment to the EIR for the General Plan).	\$7,500	Environmental analysis report must be circulated for public review and comment before any action is taken on the SOI amendment and annexation.
7. City conducts Planning Commission hearings.	\$1,000	
8. City conducts City Council hearings to adopt resolution of application to LAFCo to officially initiate SOI/Annexation.	\$1,000	
9. Application submitted to LAFCo for SOI Amendment/Annexation and MSR adoption.	\$1,000	
10. LAFCo conducts review and analysis.	SOI: \$5,040; MSR: 1,350 * (LAFCo fees)	
11. LAFCo meeting to consider SOI amendment and Municipal Service Review document.		
12. LAFCo hearing to consider annexation.	\$14,400 (LAFCo fee)	
13. State Board of Equalization filings	\$2,000 (State fee)	
Total	\$53,790	
Note: * = approximate fee		

As the foregoing table shows, the City would also have to pay significant fees to LAFCo for processing the request. There are also fees that are paid to the Fresno County Fire Protection District when land is annexed. The amount of those fees are undetermined at the time this report was prepared.

It is estimated that 6 to 8 months could be required to complete the project. It is important to know that there are many “moving parts” with this type of action, including numerous agencies who can weigh in and cause work to be slowed with unforeseen demands, including the County, LAFCo and districts whose territory might be affected. In addition, property owners who may be resistant to annexation could result in delays or termination of the action.

At this point, staff wants to get some feedback from the City Council on whether or not to initiate work on this project.



STAFF REPORT

TO: City Council
FROM: Ben Gallegos, City Manager
DATE: November 6, 2017
SUBJECT: Figtree PACE Financing Program

BACKGROUND:

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. The financing for these improvements has come to be known as PACE, which stands for Property Assessed Clean Energy.

Figtree is one of the leading private PACE financing companies operating in the United States today. Over 100 municipalities throughout California have already joined the Figtree program, which is offered through its JPA partner the California Enterprise Development Authority (CEDA). Together Figtree and CEDA offer the program as a complete turnkey PACE solution without cost to the city. Furthermore, Figtree has agreed to provide indemnification to the City for its participation.

The Figtree PACE program provides 100% upfront financing to residential and commercial property owners for a wide range of eligible property improvements. Repayment is made through an owner's annual property payment with flexible repayment terms ranging from five to 20 years. PACE may also allow payments to be passed on to a new property owner if the property is sold before the PACE financing is paid in full.

By encouraging City residents and business owners to use energy and water more efficiently, and by developing and supporting renewable energy to power buildings, the Figtree PACE program supports the City's ongoing efforts to bolster the local economy, create new green jobs, and improve quality of life. Adopting the Figtree PACE program also supports the City's climate action plan goals and by helping, our residents secure a more sustainable future.

The item before City Council tonight is to consider adopting the Figtree PACE Financing Program to allow both residential and commercial property owners in the City to voluntarily, place assessment liens on their property for the purpose of installing energy efficiency and conservation, water efficiency and conservation and renewable energy generation upgrades.

DISCUSSION:

The Figtree Program is being proposed to allow property owners in participating cities and counties to finance renewable energy, energy and water efficiency improvements, and electric vehicle charging infrastructure on their property. The Figtree program is offered through the California Enterprise Development Authority

(CEDA), created by the California Association for Local Economic Development (CALED). There are currently over 100 cities and counties participating in the Figtree PACE program.

If a property owner chooses to participate, the installed improvements will be financed by the issuance of bonds by CEDA. The bonds are secured by a voluntary contractual assessment levied on such owner's property, with no recourse to the local government or other participating jurisdictions. Participation in the program is 100% voluntary. Property owners who wish to participate in the program agree to repay the amount borrowed through the voluntary contractual assessment collected together with their property taxes.

Non-Exclusivity of the Figtree PACE Program

Another important factor to note regarding the proposed Figtree Program is that it is completely non-exclusive; meaning other viable PACE programs would be allowed to operate in the City. There are other PACE programs currently being developed and in varying stages of implementation and it is important to note that adoption of the Figtree Program would not preclude the City from implementing other programs. The inclusion of competing programs would provide greater options and potentially greater benefits to the property owners in the City. When these other viable programs are ready to be implemented, they may be brought before Council for consideration.

FHFA Issues

In July 2010, the Federal Housing Finance Agency (FHFA) announced its opposition to PACE financing programs. FHFA's rationale for opposing PACE programs is based on the senior lien status afforded by California law to PACE transactions. In the event of a default, borrowers could be required to repay PACE lenders prior to repaying their original mortgage lenders. FHFA fears that this priority in repayment could make mortgages on properties participating in PACE more risky for mortgage lenders. Since 2010, the State of California in conjunction with PACE providers has taken several actions to ensure PACE does not pose a risk to the mortgage industry.

To address these concerns, Figtree incorporates the following measures and requirements into its residential PACE program:

- **Maintains a 15 Percent Equity Requirement:** Maintaining minimum equity requirements for participating property owners limits the risk lenders by ensuring there is sufficient equity in the property from which a PACE assessment can be paid in the event of default. This equity cushion ensure both lenders and PACE programs will be able to recover their investments.
- **Limits Assessments to 10 Percent of Property Value:** Limiting the assessment amount is another way to limit the risk to lenders. Combined with equity requirements, the 10% limitation provides a great deal of protection to lenders.
- **Evaluates Past Payment History:** Looking at a property owners past property tax payment history screens out many of the property owners who are likely to default on their property tax payments in the future. This screening also reduces the risk exposure to both PACE bondholders and mortgage lenders.
- **Checks Borrower Credit Histories for Bankruptcies:** Again, this type of screening eliminates from eligibility property owners who are likely to default on their property tax payments in the future.
- **Will Participate in California's Loan Loss Reserve Program:** The State's Loan Loss Reserve Program will provide additional protection to mortgage lenders for any lost cash outflows, as a result, of PACE assessment payments. Figtree will participate in the Loan Loss Reserve Program as soon as Figtree's statewide residential program launches in 2015. Figtree also suggest the County's PACE program join this reserve program.

CEQA COMPLIANCE STATEMENT:

Not a project as defined by CEQA.

FISCAL IMPACT:

The intent of the Figtree Program is to provide a “turn-key” operation with no City funds required and very limited staff time necessary. There will be no monetary impact to the City’s budget; however, minimal staff time will be required to assist with the implementation of the program.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council:

1. Adopt Resolution No. 17-43 joining the California Enterprise Development Authority (CEDA) as an Associate Member and authorizing CEDA, through Figtree Financing, to offer their program and levy assessments within the City of Firebaugh.

CITY MANAGER RECOMMENDATION:

Approve Department Recommendation

Attachments:

1. Resolution No. 17-43
2. CEDA Associate Membership Agreement
3. Indemnification Agreement

RESOLUTION NO. 17-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH, CALIFORNIA, APPROVING ASSOCIATE MEMBERSHIP BY THE CITY IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY; AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING TO ASSOCIATE MEMBERSHIP OF THE CITY IN THE AUTHORITY; AUTHORIZING THE CITY TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF FIREBAUGH; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the City of Firebaugh, 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 "CEDA") 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, CEDA is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of CEDA 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 CEDA is attached; and

WHEREAS, the City is willing to become an Associate Member of CEDA subject to the provisions of the Associate Membership Agreement.

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, seismic retrofits, electric vehicle charging infrastructure, 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 City desires to allow the owners of property ("Participating Parcel") within its jurisdiction ("Participating Property Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

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

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by CEDA in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, said ROI sets forth the territory within which assessments may be levied for Figtree PACE which territory shall be coterminous with the City's official boundaries of record at the time of adoption of the ROI (the "Boundaries"); and

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

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings, 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, that the City Council of the City of , hereby finds, determines and declares as follows:

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.

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.

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.

4. The City is a municipal corporation and in good standing.

5. 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.

6. 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.

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

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

8. 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.

9. 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.

10. 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.

11. The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to all 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 person for CEDA in connection with Figtree PACE.

12. 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)).

13. 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.

14. Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.

PASSED AND ADOPTED this 6th day of November, 2017 by the following vote, to wit:

AYES: Councilmember,

NOES: Councilmember,

ABSENT: Councilmember,

ABSTAIN: Councilmember,

APPROVED:

ATTEST:

Brady Jenkins, Mayor
City of Firebaugh City Council

Rita Lozano, Deputy City Clerk
City of Firebaugh City Council

APPROVED AS TO LEGAL FORM:

Meggin Boranian, City Attorney

**CERTIFICATE OF CLERK OF THE CITY COUNCIL
CITY OF FIREBAUGH**

I, _____, Clerk of the City of Firebaugh, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted at the meeting of the City Council of the City of Firebaugh duly and regularly held in the Council Chambers, Firebaugh, on November 6, 2017, of which meeting all of the members of said City Council had due notice.

I further certify that I have carefully compared the foregoing copy with the original minutes of said meeting on file and of record in my office; that said copy is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified, rescinded or revoked in any manner since the date of its adoption, and the same is now in full force and effect.

IN WITNESS WHEREOF, I have executed this certificate this 6th day of November, 2017.

Rita Lozano, Deputy City Clerk
City of Firebaugh

EXHIBIT A

CEDA Resolution of Intention

**RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY
DECLARING INTENTION TO FINANCE INSTALLATION OF DISTRIBUTED
GENERATION RENEWABLE ENERGY SOURCES, ENERGY EFFICIENCY, SEISMIC
RETROFITS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE, AND WATER
EFFICIENCY IMPROVEMENTS IN THE CITY OF _____**

WHEREAS, the California Enterprise Development Authority (“CEDA”) is a joint powers authority authorized and existing pursuant to Joint Powers Act (Government Code Section 6500 et seq.) and that certain Joint Exercise of Powers Agreement (the “Agreement”) dated as of June 1, 2006, by and among the cities of Eureka, Lancaster and Selma; and

WHEREAS, CEDA is authorized under the Agreement and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

WHEREAS, CEDA has obtained authorization from the County _____ (the “City”) to enter into contractual assessments for the financing of the installation of Authorized Improvements in the City; and

WHEREAS, CEDA desires to declare its intention to establish a Figtree PACE program (“Figtree PACE”) in the City, pursuant to which CEDA, subject to certain conditions set forth herein, would enter into contractual assessments to finance the installation of Authorized Improvements in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1. Findings. The Board of Directors hereby finds and determines the following:

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.
- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.
- (d) A public purpose will be served by establishing a contractual assessment program, to be known as Figtree PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

Section 2. Determination of Public Interest. The Board of Directors hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the City, within which CEDA and property owners within the City may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for CEDA to finance the installation of Authorized Improvements in the County pursuant to Chapter 29.

Section 3. Identification of Authorized Improvements. CEDA hereby declares its intention to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 hereof (the "Report"), as that Report may be amended from time to time.

Section 4. Identification of Boundaries. Contractual assessments may be entered into by property owners located within the entire geographic territory of the City including unincorporated territory within City Boundaries. A property owner located within a City within the City may enter into contractual assessments with CEDA only after such City has adopted a resolution to authorize participation in the PACE Program.

Section 5. Proposed Financing Arrangements. Under Chapter 29, CEDA may issue bonds, notes or other forms of indebtedness (the "Bonds") pursuant to Chapter 29 that are payable by contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any indebtedness issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29. The creditworthiness of a property owner to participate in the financing of Authorized Improvements will be based on the criteria developed by Figtree Energy Financing (the "Program Administrator") upon consultation with Figtree PACE Program underwriters or other financial representatives, CEDA general counsel and bond counsel, and as shall be approved by the Board of Directors of CEDA. In connection with indebtedness issued under the Improvement Bond Act of 1915 that are payable from contractual assessments, serial and/or term improvement bonds or other indebtedness shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date) and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by the Board of Directors at the time of the issuance and sale of the indebtedness. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of the Board of Directors to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. Neither CEDA, nor any of its members participating in the Figtree PACE Program, shall advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

CEDA hereby authorizes the Program Administrator, upon consultation with CEDA general counsel, bond counsel and the Figtree PACE underwriter, to commence preparation of documents and take necessary steps to prepare for the issuance of bonds, notes or other forms of indebtedness as authorized by Chapter 29.

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with

respect to delinquent contractual assessment installments under specified circumstances.

Section 6. Public Hearing. Pursuant to the Act, CEDA hereby orders that a public hearing be held before CEDA Board (the "Board"), at 550 Bercut Drive, Suite G, Sacramento, CA 95811, on _____, _____, at _____ A., for the purposes of allowing interested persons to object to, or inquire about, the proposed Figtree PACE Program. The public hearing may be continued from time to time as determined by the Board for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed Figtree PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

Section 7. Notice to Water and Electric Providers. Pursuant to Section 5898.24 of the Streets & Highways Code, written notice of the proposed contractual assessment program within the City to all water and electric providers within the boundaries of the City has been provided.

Section 8. Report. The Board hereby directs the Program Administrator to prepare the Report and file said Report with the Board at or before the time of the public hearing described in Section 6 hereof containing all of the following:

- (a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.
- (b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner.
- (c) A statement of CEDA's policies concerning contractual assessments including all of the following:
 - (1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.
 - (2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
 - (3) A maximum aggregate dollar amount of contractual assessments.
 - (4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.
- (d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any

reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.

A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the City, and a plan for financing the payment of those fees.

Section 9. Nature of Assessments. Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by CEDA, the assessments shall be collected in the same manner and at the same time as the general taxes of the City on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

Section 10. Consultations with County Auditor-Controller. CEDA hereby directs the Program Administrator to enter into discussions with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to CEDA for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

Section 12. Procedures for Responding to Inquiries. The Program Administrator shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

Section 13. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this ____ day of ____, 201__.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair

ATTEST:

Helen Schaubmayer, Assistant Secretary

EXHIBIT B

Indemnification Agreement

SAMPLE

INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE CITY OF FIREBAUGH AND
FIGTREE COMPANY, INC.

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

RECITALS

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

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

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

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

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

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

NOW, THEREFORE, in consideration of the above premises and of the City's agreement to join the Figtree PACE Program, the parties agree as follows:

1. **Indemnification.** Figtree has provided the CEDA with an indemnification for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents, arising from or related to the Figtree PACE Program, the assessments, the assessment districts, the improvements or the financing and marketing thereof. Figtree agrees to defend,

indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury or damage due to negligence or malfeasance of any type claims as a result of the acts or omissions of Figtree, except for such loss or damage which was caused by the sole negligence or willful misconduct of the City. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Figtree.

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

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

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

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

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

If to the Administrator

Figtree Company, Inc.
9330 Scranton Road, Suite 600
San Diego, California 92121
Attn: Chief Executive Officer

If to the City:

Ben Gallegos, City Manager
City of Firebaugh
1133 "P" Street
Firebaugh, California 93622

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

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

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

City of Firebaugh

By _____

Name: Ben Gallegos

Title: City Manager

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____

Name: Meggin Boranian

Title: City Attorney

Date: _____

Figtree Company, Inc., a California corp.

By _____

Name: Peter Grabell

Title: Senior Vice President

Date: _____

ASSOCIATE MEMBERSHIP AGREEMENT

by and between the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and the

CITY OF FIREBAUGH, 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 FIREBAUGH, 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:

Helen Schaubmayer, Asst. Secretary

CITY OF FIREBAUGH, CALIFORNIA

By: _____
Brady Jenkins, Mayor
Firebaugh City Council

ATTEST:

Rita Lozano, City Clerk
Firebaugh City Council

RESOLUTION NO. 17 – 44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING AN APPLICATION FOR FUNDING FROM THE DEPARTMENT OF WATER RESOURCES AND DESIGNATING A REPRESENTATIVE TO EXECUTE THE AGREEMENT AND ANY AMENDMENTS THERETO, FOR THE FIREBAUGH MULTI-BENEFIT MANAGEMENT PROJECT

WHEREAS, the City of Firebaugh is a California Public Agency requesting funding assistance from the State Department of Water Resources and is willing to participate in, coordinate, and collaborate with other interested parties that are participating in the development of the City of Firebaugh flood management planning activities; and

WHEREAS, the City of Firebaugh is authorized to enter into an agreement with the Department of Water Resources and the State of California; and

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

1. That pursuant and subject to funding assistance from the State Department of Water Resources, the City of Firebaugh shall submit an application to obtain funding for the Firebaugh Multi-Benefit Flood Management Project from the Department of Water Resources.
2. That the City of Firebaugh is authorized to enter into an agreement with the Department of Water Resources and any amendments thereto.
3. That the City Manager, or designee, shall prepare the necessary data, make investigations, and take other such actions as necessary and appropriate to obtain funding for the Firebaugh Multi-Benefit Flood Management Project.

The foregoing Resolution was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 6th day of November, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk

I hereby certify that the foregoing is a full, correct and true copy of a resolution passed by the City Council of the City of Firebaugh, a Municipal Corporation of the County of Fresno, State of California, at a regular meeting held on the 6th day of November, 2017, and I further certify that said resolution is in full force and effect and has never been rescinded or modified.

DATED: _____

Rita Lozano, Deputy City Clerk of the City of Firebaugh

Appendix 4: Attorney's Certification

(The applicant's attorney shall answer the following questions regarding this proposal and where indicated, shall cite statutory authority or other references.)

- Is the Applicant a political subdivision of the State of California? ☒ Yes () No
Citation: Gov. Code § 8557(b).
- Does the Applicant have legal authority to enter into a funding agreement with the State of California? ☒ Yes () No
Citation: Gov. Code §§ 37103; 37112; 37351
- What steps are required by law for the Applicant to contract with the State?
Service contracts of \$7500.00 or less may be approved by City Manager; contracts greater than that amount must be approved by City Council.
Citation: Firebaugh Municipal Code Ch. 2-12.3.
- What is the statutory authority under which the Applicant may obtain funds for the purpose, amount, and duration requested?
Citation: Gov. Code §§ 37351; 37112.
- What is the statutory authority under which the Applicant was formed and is authorized to operate?
Citation: Cal. Const. at XI, Section 7; Gov. Code § 34000 et seq.
- Is the Applicant required to hold an election before entering into a funding contract with the State? () Yes ☒ No
Citation: Firebaugh Municipal Code Ch. 2-12.3.

- Will a funding agreement between the Applicant and the State be subject to review and approval by other governmental agencies? () Yes ☒ No

Identify all such agencies: Not applicable.

Citation: Firebaugh Municipal Code Ch. 2-12.3.

- Describe any pending litigation that impacts the financial condition of the Applicant or the operation of flood management facilities. If none is pending, so state.

There is no pending litigation that will impact the financial condition of the Applicant or operation of flood management facilities.

- Does the Applicant have legal authority and jurisdiction to implement a flood control program and the authority to make land use decisions at the Project site and in the protected area? ☒ Yes () No

Citation: Cal. Const. at XI, Section 7; Gov. Code § 65300 et seq.; Gov. Code § 65800.

I certify that I am a duly qualified and licensed attorney in California representing the applicant agency and that I have answered the questions on this page and the preceding page to the best of my knowledge.

By Meggin Boranian
(Signature of Applicant Agency's Attorney)

Date 10/16/17

Meggin Boranian
(Printed Name of Applicant Agency's Attorney)

97436
(Title) (Bar No.)

City of Firebaugh
(Name of Applicant Agency)

RESOLUTION NO. 17 - 45

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH
AUTHORIZING THE CITY MANAGER TO SETTLE CLAIM NUMBER 938194-GF WITH
NATIONWIDE AGRIBUSINESS INS. NAIC, et al.
AND EXECUTE A PROPERTY DAMAGE RELEASE**

WHEREAS, the City of Firebaugh, has received an offer to settle Claim Number 938194-GF from Nationwide Agribusiness Ins. NAIC and Property Damage Release, which is attached and incorporated herein by this reference; and

WHEREAS, the City Council does hereby accept and agrees with the terms and conditions set forth in the Release; and

WHEREAS, the City Council wishes to appoint the Acting City Manager, Ben Gallegos, as the designated City representative to execute said Release.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Firebaugh that it does hereby authorize the Acting City Manager, Ben Gallegos, to settle the claim and execute said Release.

The foregoing Resolution was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 6th day of November, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk

I hereby certify that the foregoing is a full, correct and true copy of a resolution passed by the City Council of the City of Firebaugh, a Municipal Corporation of the County of Fresno, State of California, at a regular meeting held on the 1st day of November, 2017, and I further certify that said resolution is in full force and effect and has never been rescinded or modified.

Date: _____

Rita Lozano, Deputy City Clerk



Page 1 of 1

Date prepared October 19, 2017
Claim number 938194-GF
Policy number FPK BAN 7802487326
Questions? Contact Claims Associate
Whitney Gray
GRAYW4@nationwide.com
Phone 720-889-1416
Fax 855-290-5199

City of Firebaugh
1666 11th St
Firebaugh, CA 93622-2239

**Complete the enclosed
release form to resolve
this claim**

About Notary Publics
Contact your local bank for
more information about Notary
Public services.

Dear Mr. Gallegos,

To help us resolve this Liability claim as quickly as possible, please have
your client complete and return the enclosed form.

Claim details

Insurer:	Nationwide Agribusiness Ins NAIC
Policyholder:	James Mello Hay Sales & Trucking
Claimant:	City of Firebaugh
Claim number:	938194-GF
Loss date:	September 11, 2017

What you need to do

Please complete and sign the enclosed Property Damage Release form in
the presence of two witnesses and a Notary Public and return it to me by
mail at One Nationwide Gateway, Des Moines, IA 50391-1913 or by e-mail at
grayw4@nationwide.com.

For help when you need it

Thank you for your help in resolving this claim as quickly as possible. If you
have any questions or concerns, please contact me at 720-889-1416 or
GRAYW4@nationwide.com.

Sincerely,

Whitney Gray
Nationwide Agribusiness Ins NAIC
One Nationwide Gateway Dept. 5576
Des Moines, IA 50391-1913

For your protection, California law requires the following to appear on this
form. Any person who knowingly presents false or fraudulent claim for the
payment of a loss is guilty of a crime and may be subject to fines and
confinement in state prison.

PROPERTY DAMAGE RELEASE

Claim Number: 938194-GF

Policy Number: FPK BAN 7802487326

Date Prepared: October 17, 2017

Notice of Loss Date: September 12, 2017

Claims Associate: Whitney Gray

Associate Phone: 720-889-1416

Associate Address: One Nationwide Gateway, Dept. 5576, Des Moines, IA 50391-1913

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being of lawful age, for sole consideration of Eighteen Thousand Three Hundred and Seventy-Three dollars and 75/100 (\$18,373.75) to be paid to City of Firebaugh do/does hereby and for my/our/its heirs, executors, administrators, successors and assigns release, acquit and forever discharge Nationwide Agribusiness Ins NAIC, James Mello Hay Sales & Trucking, James Mello, Linda Mello, Melissa Mello, James Mello & Tab Mello Partners, and Jose Estrada and his, her, their, or its agents, servants, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships of and from any and all property damage claims, actions, causes of actions, demands, rights, damages, costs, loss of service, expenses, and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen property damage and the consequences thereof resulting or to result from the accident, casualty or event which occurred on or about September 11, 2017 at or near Ave 7, Firebaugh, CA 93622.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releasees deny liability therefore and intend merely to avoid litigation and buy their peace.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this _____ day of _____, 20_____.

CAUTION! READ BEFORE SIGNING

Witness Signature: _____

Your Signature: _____

Witness Signature: _____

Your Signature: _____

State of _____ County of _____

On this _____ day of _____, 20_____. Before me personally appeared _____, to me known to be the person described herein, and who executed the forgoing instrument and he/she acknowledged that he/she voluntarily executed the same.

Notary Public: _____

My term expires _____, 20_____

For your protection, California law requires the following to appear on this form. Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

STAFF REPORT

AGENDA ITEM: Resolution Accepting Completion for the City of Firebaugh Water Main Replacement 15-CDBG-10568, Authorizing the City Clerk to file a Notice of Completion with Fresno County, and Authorizing the City Manager to Release Payment and Performance Bonds and Make Final Payment of Retention Monies to Rolfe Construction.

MEETING DATE: November 6, 2017

PREPARED BY: Mario B. Gouveia, City Engineer

REVIEWED BY: Ben Gallegos, Acting City Manager

RECOMMENDATION:

1. Accept the work as complete.
2. Authorize the City Clerk to record a Notice of Completion with Fresno County.
3. Authorize the Active City Manager to release Payment and Performance Bonds and to make final payment of retention monies to Rolfe Construction following the expiration of 35 days from the date of recordation of the Notice of Completion.

BACKGROUND/DISCUSSION:

The City of Firebaugh advertised the Water Main Replacement 15-CDBG-10568 on December 7, 2016, December 14, 2016, December 21, 2016, and December 28, 2016 and the City received a total of eight bids for this project. Rolfe Construction submitted the lowest bid and was awarded a contract for \$884,983.00.

The projects construction phase started on April 3, 2017 and the major work consisted of installing new waterline, transferring and relocating existing water services, installing water valves, replacing fire hydrants, and pulverizing and reconstructing asphalt concrete pavement in the City of Firebaugh.

The Contractor completed all work within the time required by the Contract Documents.

PROJECT COST SUMMARY

Contract Amount	\$	884,983.00
Change Orders	\$	109,204.47
Actual Construction Cost	\$	994,187.47

Final inspection has been performed and the work has been found to be in compliance with the plans and specifications. Therefore, the work should be accepted as complete and a Notice of Completion filed. If no claims are filed within 35 days after recordation, the Payment and Performance Bond should be released and retention in the amount of \$49,709.37 should be paid to Rolfe Construction.

FISCAL IMPACT:

The recommended action will have no fiscal impact. The final construction contract cost inclusive of all authorized work was \$994,187.47. Funding for this project was through a Community Development Block Grant 15-CDBG-10568.

ATTACHMENTS:

1. Resolution No. 17 - 46

RESOLUTION NO. 17 - 46

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH FOR THE
ACCEPTANCE OF WATER MAIN REPLACEMENT 15-CDBG-10568, AUTHORIZING THE
CITY CLERK TO RECORD A NOTICE OF COMPLETION WITH FRESNO COUNTY AND
AUTHORIZING THE CITY MANAGER TO RELEASE PAYMENT AND PERFORMANCE BONDS
AND TO MAKE FINAL PAYMENT OF RETENTION MONIES TO ROLFE CONSTRUCTION**

WHEREAS, the City advertised the Project on December 7, 2016, December 14, 2016, December 21, 2016, and December 28, 2016; and

WHEREAS, the City received and the Deputy City Clerk publicly opened bids on January 11, 2017; and

WHEREAS, the City Council awarded a contract to Rolfe Construction in the amount of \$884,983.00, on January 23, 2017; and

WHEREAS, the Public Works Department and City Engineer have completed a final inspection of the Project and recommends final acceptance; and

WHEREAS, upon approval of the final acceptance of the Project by the City Council, the City Clerk will record a Notice of Completion with Fresno County and the City Manager will release Performance and Payment Bonds and the retention monies due the Contractor 35 days after the recording date.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Firebaugh hereby:

1. Adopts a Resolution to accept the Water Main Replacement 15-CDBG-10568.
2. Authorizes the City Clerk to record a Notice of Completion with Fresno County.
3. Authorizes the City Manager to release Performance and Payment Bonds and to make final payment of retention monies to Rolfe Construction 35 days after the recording date.

Passed and adopted this 6th day of November 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Approved:

Attest:

Brady Jenkins, Mayor
City of Firebaugh

Rita Lozano, Deputy City Clerk

I, hereby certify that the forgoing resolution was regularly introduced, passed and adopted at a regular meeting of the City Council of the City of Firebaugh this 6th day of November 2017.

Rita Lozano, Deputy City Clerk
City of Firebaugh

RECORDING REQUESTED BY:

City Clerk
City of Firebaugh

WHEN RECORDED RETURN TO:

City of Firebaugh
1133 "P" Street
Firebaugh, CA 93622

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN:

1. That the interest of estate stated in paragraph 3 below in the real property hereinafter described is owned by the following:

NAME	STREET AND NO.	CITY	STATE
City of Firebaugh	1133 "P" Street	Firebaugh	CA

(if more than one owner of the interest stated, the name and address of each must be inserted)

2. That the full name and address of the owner of said interest or estate, if there is only one owner, and the full names and addresses of all the co-owners who own said interest or estate as joint tenants, as tenants in common or otherwise, if there is more than one owner, are set forth in the preceding paragraph.
3. That the nature of the title of said owner, or if more than one, then of said owner and co-owner is: **In Fee.**
4. That on the 3rd day of October, 2017 a work of improvement on the real property hereinafter described was completed.
5. That the name of the original contractor, if any for such work of improvement was:

Rolfe Construction
(If no contractor for work of improvement as a whole, insert "No Contractor")

6. That the real property herein referred to is situated in the City of Firebaugh , County of Fresno, State of California, and is described as follows:

The major work consisted of installing new waterline, transferring and relocating existing water services, installing water valves, replacing fire hydrants, and pulverizing and reconstructing asphalt concrete pavement in the City of Firebaugh.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date

By: _____
Signature of Owner

Ben Gallegos, Acting City Manager

Print Name

VERIFICATION

I understand, state:

I am the person who signed the foregoing notice. I have read the above notice and know its contents, and the facts stated therein are true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Firebaugh, California
This 6th day of November, 2017.

City of Firebaugh

Owner

By: _____
Ben Gallegos, Acting City Manager