



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

Meeting Date: 9/27/2011

Report Type: Staff/Discussion

Title: Agreement: City of Sacramento Commercial Property Assessed Clean Energy Program

Report ID: 2011-00820

Location: Citywide

Recommendation: Adopt a Resolution: 1) approving a professional services agreement with Ygrene Energy Fund, Inc. in an amount not to exceed \$321,000 to administer and finance a City sponsored commercial Property Assessed Clean Energy (PACE) program; 2) authorizing the City Manager or the City Manager's designee to execute commercial PACE contractual assessments on behalf of the City.

Contact: Yvette Rincon, Sustainability Program Manager, (916) 808-5827; Reina J. Schwartz, Director, (916) 808-7195, Department of General Services

Presenter: Reina J. Schwartz, Director, Department of General Services, (916) 808-7195

Department: General Services Dept

Division: Office of the Director

Dept ID: 13001021

Attachments:

- 1- Description/Analysis
- 2- Attachment 1 Background
- 3- Attachment 2- Ygrene's Energy Fund California Services
- 4- Exhibit A Professional Services Agreement-Ygrene Energy Fund California
- 5- Resolution

City Attorney Review

Approved as to Form
Joseph Cerullo
9/27/2011 12:15:35 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
9/12/2011 10:41:56 AM

Approvals/Acknowledgements

Department Director or Designee: Reina Schwartz 9/27/11 7:37:40 AM



Description/Analysis

Issue: Over the past two years, at the direction of City Council, staff has been working on the development of a Property Assessed Clean Energy (PACE) program. The initial focus was on the development of a residential program, however, that came to a standstill in July 2010 when the Federal Housing Authority (FHA) issued a letter effectively blocking implementation of a residential PACE program for any loans insured by the FHA. As a result, the focus then shifted to development of a commercial PACE program designed to allow owners of commercial and industrial property to finance energy efficiency and renewable energy projects, and pay for the cost of such projects through a special assessment on their property. Similar programs are in operation in Sonoma, Placer and Los Angeles Counties, and in the City and County of San Francisco.

The professional services agreement before the City Council authorizes Ygrene Energy Fund, California, LLC to market, fund, and administer the City's PACE program. The agreement includes performance requirements in hopes of increasing the likelihood of success of the program. Additional program details are included in Attachment 2.

Policy Considerations: The recommendations in this report are consistent with Resolution No. 2010-346 prohibiting the City from entering into any contract for the purchase of goods or services from any business or entity headquartered in Arizona, and the City Council's economic and sustainability priorities for the City.

Participation in the PACE program will be entirely voluntary and will enable owners of commercial property to finance renewable-energy, energy-efficiency, or water-conservation improvements using investor funds repaid through assessments added to their property-tax bills. These projects will reduce operating costs for business owners, create jobs, and reduce greenhouse-gas emissions.

Environmental Considerations:

California Environmental Quality Act (CEQA): Adoption of a resolution approving a professional-services agreement for administration and funding of the PACE program is not a "project" subject to CEQA because (a) it has no potential to cause a significant effect on the environment and (b) it pertains to creation of a government-funding mechanism not involving a commitment to a specific project that may result in a potentially significant physical impact on the environment. (Cal. Code Regs. title. 14, §§ 15061(b)(3) & 15378(b)(4).)

Sustainability: Creating a commercial PACE program is one of the implementation actions identified in the 2011 Sustainability Plan and a voluntary implementation item in the City's Climate Action Plan. For every project that is financed through this program there will be a corresponding reduction in greenhouse gas emissions from energy efficiency improvements.

Commission/Committee Action: None

Rationale for Recommendation: On March 2, 2011, the Department of General Services issued a Request for Proposals (RFP) No. P11131021001 for the administration and funding of a City-sponsored commercial PACE program. Three responses were received. A selection committee composed of staff from the Cities of Sacramento, Davis, and West Sacramento

interviewed all three firms. In addition, given the complexity of the program, the selection committee received assistance in an advisory capacity from the Sacramento Metropolitan Utilities District (SMUD), the State of California Energy Commission, and the City of Sacramento Office of the City Attorney, Office of the City Treasurer, and the Department of Finance. Ygrene Energy Fund, Inc. was selected as the most qualified firm, and it subsequently formed Ygrene Energy Fund California, LLC for the PACE program.

The proposed PACE program will benefit the environment as well as the local economy. A study commissioned by the City, and completed by the Center for Strategic Economic Research, calculates that this program has the potential to annually create \$30 million in economic output, 232 jobs, \$13 million in salaries, and \$1.6 million in state and local tax revenue.

Financial Considerations: Ygrene Energy Fund California, LLC will administer and finance the PACE program at no cost to the City. Ygrene's sole source of compensation for performing these services will be derived from the assessments paid by property owners who obtain financing from Ygrene through the program. In addition, the City will make available to Ygrene up to \$321,000 in funds from an Energy Efficiency Conservation Block Grant (EECBG) for use by Ygrene in (1) developing administrative software for the Program; (2) conducting Program marketing and outreach; and (3) conducting energy audits to confirm actual energy savings associated with the various improvements. The City Council previously accepted these grants funds on May 22, 2009, through the adoption of Resolution No. 2009-320, which authorized the acceptance of \$4.7 million in EECBG funds through the American Recovery and Reinvestment Act of 2009. A total of \$630,812 of this grant has been programmed in the City's Federal Energy Efficiency Grant Project (G13000050, Fund 2702, Operating Grants) for establishment of a regional assessment-financing program.

Emerging Small Business Development (ESBD): None



Attachment 1

Background

The City of Sacramento is and has been a leader in sustainability and continually seeks opportunities to enhance that status. The City’s goal is to reduce greenhouse-gas (“GHG”) emissions communitywide to 1990 levels by 2020. In the City, GHG emissions from commercial and industrial buildings are second only to transportation related GHG emissions — exceeding even residential GHG emissions. Reaching the communitywide GHG-emission-reduction goal will require a number of programs and policies. The commercial PACE program is one important program that the City will pursue, not only to reduce GHG but also to create jobs and reduce operating costs for commercial and industrial buildings in the City.

This program will address two major financial hurdles to these capital-intensive projects: the high up-front cost and the potential that those costs will not be recovered upon sale of the property. Under the proposed program, there is little or no up-front cost to the property owner, and if the property is sold before the investors are repaid the new owner simply assumes responsibility for the remaining assessments as part of the property’s annual tax bill.

The commercial PACE program will enable owners of commercial or industrial property to obtain investor funding for renewable-energy, energy-efficiency (e.g., solar thermal, solar electric), and water-conservation improvements and repay the investors over a multi-year period (not to exceed 20 years) through annual assessments on their property-tax bills. The program is completely voluntary: no property will be subject to an assessment unless the owner volunteers to participate in the program and enters into a contract for the assessment. Moreover, each participating owner will pay only for the cost of qualifying improvements to that owner’s property (including principal, interest, reserves, and administrative costs) plus application fees.

Attachment 2

Ygrene Energy Fund, Inc. will provide the following services:

- Project underwriting – only qualifying properties and eligible improvements are financed
- Energy standards – ensure that the utility cost savings exceed the investment in the improvements (as measured by the Savings to Investment (SIR) calculation)
- Contractor certification – in order to participate and access program funding, contractors must have the required business licenses, insurance, energy credentials and software/system and other training
- Marketing and outreach – to property owners, contractors, real estate professionals, banks and other local organizations within the City
- Funding – short-term funding of projects as they are approved and long-term program funding, both through a variety of sources including Barclays Capital and Clean Fund. There is also a mechanism for local bank participation.
- Software – proprietary, web-based system provides energy savings calculation, financial underwriting, project management, reporting and audit functionality
- Serve as liaison between the City, property owners, and contractors hired to construct the improvements

Program underwriting includes:

- Participating properties must be current on their property tax payments, mortgage, and not in bankruptcy
- Only items or categories on the list of eligible improvements can be financed
- The maximum amount that can be financed is 10% of the property value and annual tax payments cannot exceed 5% of the property's value at the time of the assessment
- The property must have 85% loan to value before the PACE assessment and 95% after the PACE assessment.
- Repayment terms are up to 20 years, based on the useful life of the improvements or equipment
- The proposed energy savings over the life of the improvements must be greater than the cost of the improvements



PROJECT #: 2002002
PROJECT NAME: City of Sacramento Property Assessed Clean Energy Program
DEPARTMENT: General Services
DIVISION: Office of the Director

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT *

THIS AGREEMENT is made at Sacramento, California, as of September 27, 2011, by and between the **CITY OF SACRAMENTO**, a municipal corporation (“**CITY**”), and **YGRENE ENERGY FUND CALIFORNIA, LLC**, a California limited-liability company, P.O. Box 5150, Santa Rosa, California 95402 (“**CONTRACTOR**”), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager’s authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CONTRACTOR’s compensation for rendering services under this Agreement is described in Exhibit B
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D, which include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.
5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

* This form to be used for all professional services, except professional services related to a construction project and professional services performed by licensed architects, landscape architects or professional land surveyors or registered professional engineers.

- 6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
- 7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO

By: _____

Print name: _____

Title: _____

Date: September ____, 2011

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits

CONTRACTOR:

Ygrene Energy Fund California, LLC

Federal I.D. No.

State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation (*may require 2 signatures*)
- Limited Liability Company
- Other (*please specify: _____*)

Signature of Authorized Person:

Dennis R. Hunter, Chief Executive Officer

Date: September ____, 2011

DECLARATION OF COMPLIANCE

Equal Benefits Ordinance

Name of Contractor: Ygrene Energy Fund, Inc., a Delaware corporation

Address: 900 College Avenue, First Floor, Santa Rosa, CA 95405

Mailing Address: P.O. Box 5150, Santa Rosa, CA 95402

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date

after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
- 5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 - 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
 - 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
 - 8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

(Signature page follows)

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Ygrene Energy Fund California, LLC

By: _____
Dennis R. Hunter, Chief Executive Officer

Date: _____, 2011

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Yvette Rincon, Sustainability Program Manager
Department of General Services 5730 24th Street, Building 1
Sacramento, CA 95822
Phone: (916) 808-5827
Email: yrincon@cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Dan Schaefer, President
Ygrene Energy Fund California, LLC
P.O. Box 5150, Santa Rosa, CA 95402
Email: dan@ygrene-energy.com*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Professional Liability Insurance. Professional Liability (Errors and Omissions) insurance is is not [check one] required for this Agreement. If required, such coverage must be continued for at least three year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the CITY and CONTRACTOR;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: yes no *[check one]*

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. **Scope of Services.** The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.
5. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services.

ATTACHMENT 1 TO EXHIBIT A

Functions and Responsibilities for City of Sacramento Property Assessed Clean Energy (PACE) Program

CONTRACTOR shall provide PACE administration and financing services to the CITY in accordance with the following:

PART I. TASK LIST

Task 1: Design Localization

Task 1.1: PACE Enabling Resolution

The first required action item is a resolution declaring the intention of the CITY's governing body (the "**City Council**") to establish a program that will make voluntary contractual assessment financing available to owners of commercial or industrial property within the CITY (the "**Program**"). As used in this Attachment 1 to Exhibit A, "**commercial property**" includes multi-family residential properties with four or more units. Consistent with chapter 29 (beginning with section 5898.10) in part 3 of division 7 of the California Streets and Highways Code ("**AB 811**"), CONTRACTOR and its counsel ("**Counsel**") will provide to the CITY the documents needed to establish and administer the Program. These documents must include but are not limited to the following components:

- (a) A determination that the establishment of the Program would be in the public interest as required by AB 811.
- (b) A statement that the CITY proposes to make financing through voluntary contractual assessments levied in accordance with AB 811 (the "**PACE Assessments**") available to property owners who desire to install renewable-energy sources, water-conservation improvements, and energy-efficiency improvements.
- (c) An identification of the types of renewable energy sources, water-conservation improvements, and energy-efficiency improvements that may be financed through the Program (the "**Eligible Improvements**"; see PART IV, "Eligible Improvements," below).
- (d) A description of the boundaries (including a map) of the area within which PACE Assessments will be offered.
- (e) A description of the proposed Program, including a brief description of criteria for determining the creditworthiness of a property owner.
- (f) A statement that a public hearing will be held at which interested persons may object to, or inquire about, the proposed Program or any of its particulars.
- (g) Designation of a date, time, and place for the public hearing on the proposed Program.
- (h) A statement of CITY policies concerning the Program, which must identify the types of improvements that may be financed using PACE Assessments, identify the CITY official authorized to enter into agreements for PACE Assessments on the CITY's behalf, specify the maximum aggregate dollar amount of PACE Assessments, and specify a method for setting requests for financing in priority order if the requests appear likely to exceed the authorized amount. The statement of policies must also briefly describe criteria for determining the underwriting

requirements and safeguards that will be used to ensure that the total annual property taxes and assessments on each property in the Program will not exceed 5% of the property's market value at the time the CITY approves a PACE Assessment on the property. (See Task 1.3 below.)

- (i) Consultation with the appropriate county officials to reach agreement on what additional fees, if any, will be charged to the CITY for incorporating the PACE Assessments into the assessments of the general taxes on the properties in the Program.
- (j) Development, with the advice of Willdan Financial Services, Barclays Capital, and Counsel, of standard or uniform protocols to create and maintain assessment rolls and transfer proceeds to cover debt service and associated Program costs.

Task 1.2: PACE Report

Pursuant to the CITY's authorizing resolution for the Program, CONTRACTOR shall provide a Program report (the "**Report**") that satisfies AB 811's requirements. Among other things, the Report must include the following:

- (a) **Program Jurisdiction:** A description, map, or diagram indicating the area within which PACE Assessments will be offered.
- (b) **Draft PACE Contract:** A draft contract specifying the terms and conditions that would be agreed to by the CITY and a property owner who participates in the Program (a "**PACE Contract**"). The form of the PACE Contract must be consistent with AB 811 and anticipated market conditions and must be approved by the CITY's attorney (the "**City Attorney**").
- (c) **Policy Statement:** Please reference Task 1.3 for a detailed account of what this task entails.
- (d) **CITY's PACE Finance Plan:** A description of the funding source(s) to be offered through the CITY for work financed by PACE Assessments under the Program (the "**Finance Plan**"). CONTRACTOR may rely on Counsel for legal analysis and advice as to the best means and methods to achieve Program validity and address legal matters related to the PACE Assessments and any bonds to be issued. The Finance Plan may delineate amounts to be advanced based on funds available to the CITY from any source and may include the issuance or sale of bonds, obligations, or other financing arrangements. The Finance Plan must (1) include a method for determining the interest rate and time period during which property owners would pay PACE Assessments; (2) provide for the establishment of any necessary reserve fund or funds; (3) provide for the apportionment to the property owners of all or any portion of the costs incidental to financing, administration, and collection of the assessments; and (4) address other matters necessary to attract funding and financing.
- (e) **Payment Schedules:** Based upon information provided by the CITY, CONTRACTOR shall create and provide, to both the CITY and participating property owners, payment schedules that identify the amount and timing of payments to be made during the term of the PACE Assessments based upon the Program interest rate. This schedule will be the basis for the assessment installments that will be submitted annually to the county tax collector for inclusion on property-tax bills.
- (f) **Assessment Applicant Criteria for the Approval-Denial Process:** Applicant qualification requirements will be based upon AB 811 and underwriting guidelines.
- (g) **Reports on Consultations with the County:** CONTRACTOR shall prepare and periodically update a report on the results of consultations with appropriate county officials concerning arrangements and additional fees, if any, to be charged for placing the PACE Assessments on the property-tax bills.

Task 1.3: PACE Policy Statement

CONTRACTOR and Counsel shall draft policies for use of PACE Assessments to finance Eligible Improvements (the “**Policy Statement**”). The Policy Statement will be a requirement of the Program and must be adopted by the CITY to be effective. The Policy Statement must include but is not limited to the following:

- (a) **Authorized Officials:** The City Council will identify and delegate power to one or more CITY officials who are authorized to enter into PACE Contracts with participating property owners. The Policy Statement must specify the procedures these officials must follow when entering into PACE Contracts.
- (b) **Project Identification:** CONTRACTOR shall identify the Eligible Improvements.
- (c) **Method for Prioritizing Property Owner Requests:** Unless otherwise directed by the CITY, and subject to financial underwriting guidelines, CONTRACTOR shall process and prioritize requests for participation in the Program on a first-come-first-served basis without regard to size of a project or type of property.
- (d) **Program Timelines:** CONTRACTOR shall specify various Program timelines, including a schedule for setting up the Program (see PART III, “Program Timelines,” below). Additionally, CONTRACTOR shall set performance goals for Program components such as application processing, approval notification, assessment processing, project funding, and other customer-service-related guidelines.

Task 1.4: Program Forms

CONTRACTOR shall provide the CITY a portfolio of Program forms (bi-lingual) to be used by property owners who wish to participate in the Program. These forms, which will be posted on the CITY’s website, include but are not limited to the following:

- (a) PACE Frequently Asked Questions (FAQ)
- (b) Schedule of Fees
- (c) List of Eligible Improvements
- (d) Assessment Underwriting Terms
- (e) Application & Documentation Checklist
- (f) Application
- (g) Financing Agreement
- (h) Truth-In-Lending
- (i) Lender Notification
- (j) Project Bid and PACE Contract
- (k) Funding Request Checklist
- (l) Utility Authorization to Release Information
- (m) Closing Checklist

Task 1.5: PACE Presentation to City Council

CONTRACTOR shall prepare an initial draft of the Report (see Task 1.2) and shall assist CITY staff in putting the Report in final form by reviewing subsequent drafts and providing such materials and information as are reasonably needed to adequately inform the City Council and the public about the Program and to comply with California law, including but not limited to AB 811. CONTRACTOR shall also participate as requested in the public hearing on the Program.

Task 1.6: Update and Amend the Report

As necessary, and as determined by CONTRACTOR and the CITY following the public hearing, CONTRACTOR shall make requested changes in the Program elements and the Report in a manner consistent with AB 811.

Task 2: Marketing

Task 2.1: Establish a Community-Outreach-and-Participation Plan

CONTRACTOR shall implement the four-step marketing plan for the CITY:

- (a) **Step 1: Contractor Management.** CONTRACTOR shall train and manage contractors as a prerequisite to their participation in the Program. The approach utilizes state contracting standards, nationally recognized programs, and systems training. CONTRACTOR’s training program emphasizes customer service, market outreach, technical expertise, and professionalism.
- (b) **Step 2: Property Segmentation.** Based on data analysis and statistical modeling, CONTRACTOR shall segment CITY properties into groups based on age, geographic location, assessed value, and other relevant attributes. This provides the basis for a CITY outreach program for each group of properties, using the internet, local media, and local canvassing with a targeted message.
- (c) **Step 3: Localized CITY Website Portal.** CONTRACTOR’s Web Tool allows the CITY to establish a message that is consistent with local political and economic development objectives. CONTRACTOR shall assist CITY staff in setting up and launching the localized website. (See Task 2.2.)
- (d) **Step 4: Outreach Centers.** CONTRACTOR shall open an Outreach Center that will serve the Program needs in the CITY for education, outreach, customer service, contractor liaison, and information resources. At the center, property owners can get their questions answered, obtain the necessary forms to apply for the Program, and can learn how to save energy and money; and contractors can take classes to help them improve their service and increase their businesses. CONTRACTOR shall design, furnish, and staff the Outreach Center to meet the specific needs of the Program.

Task 2.2: Website Development

CONTRACTOR shall deliver a localized web portal for the CITY. CONTRACTOR’s Web Tool is designed to be localized yet still provides the regional and statewide standardization necessary to ensure uniform legal and financial underwriting. The website components and services may include the following, as needed to implement the Program successfully:

- (a) **Video on PACE:** A short, educational video on how the Program works.
- (b) **Frequently Asked Questions (FAQ) Page** (regularly updated).

- (c) **Assessment Calculator:** A computerized tool that allows interested property owners to input their desired projects and determine both the annual assessment payments and the expected energy savings. By modeling different project components, property owners can determine an optimum retrofit and renewable energy profile for their properties.
- (d) **Estimate:** A computerized tool that allows interested property owners to enter basic information about their properties and determine the amount of financing they can qualify for under the Program.
- (e) **Project Application:** Everything necessary to apply for financing under the Program.
- (f) **Eligible Improvements:** A description of the project components a property owner can select under the Program.
- (g) **Program Forms:** All Program forms will be available through the website. They can be completed electronically or printed and filled out manually. Forms and personal assistance will also be available at the Outreach Center.
- (h) **Authorized Contractor Bid Request:** An on-line tool that provides real-time information about contractor qualifications, the jobs they are supervising, and resources for contacting them and soliciting bids.
- (i) **Project Evaluation:** Property owners can report their Program experiences with respect to project results, contractor performance, and CONTRACTOR performance. The website would also provide real-time data for CITY analysis of jobs, energy, and greenhouse-gas impacts from the Program.
- (j) **Contact Information:** Phone numbers and email addresses for all Program personnel and for qualified contractors.
- (k) **Contractor Communication and Coordination:** An online tool that allows contractors to monitor current projects and those in the pipeline.
- (l) **Contractor Information:** An Outreach Center resource that provides quick access to specialty subcontractors, when needed, and updates contractors on new tools, training, equipment, and developments in the field.
- (m) **Documents:** A comprehensive document-management system that allows password protected access to all Program and project documents, at any time, by both CONTRACTOR personnel and authorized CITY representatives.

Task 3: Contractor Certification and Training

CONTRACTOR shall maintain a list of licensed contractors whom CONTRACTOR certifies, in its reasonable judgment, as qualified to install Eligible Improvements under the Program (each such contractor, a “**Certified Contractor**”). CONTRACTOR may provide and require both direct and indirect training to ensure that Certified Contractors are professional, knowledgeable, and qualified to undertake PACE projects. In addition, CONTRACTOR shall provide oversight and evaluation and shall facilitate conflict resolution. CONTRACTOR’s software shall have the capability to —

- (a) enable all licensed building contractors to become certified and participate in the Program; and
- (b) provide a platform where Certified Contractors are able to manage the project submission-and-approval process and track the progress of payments due under their contracts;
- (c) provide a set of standards to calculate the savings-to-investment ratio (“**SIR**”) with audit and bid tools;

- (d) acquire data showing historic energy usage for each property and quantifying energy-use reductions once Eligible Improvements are completed.
- (e) provide immediate access to a wide range of data and reports related to the operation, status, and success of the overall Program.

CONTRACTOR shall require Certified Contractors to exercise a high level of skill and integrity in the installation of Eligible Improvements in the CITY. To this end, CONTRACTOR shall require Certified Contractors (a) to ensure that roof structures are adequate and appropriate for installation of roof-mounted photovoltaic systems; (b) to comply with CONTRACTOR's requirements for the removal and disposition of CFC's and other greenhouse gases; (c) to apply best commercially reasonable industry standards in the installation of all Eligible Improvements financed under the Program; and (d) to attend training programs designated by CONTRACTOR from time to time.

Task 4: Administration

CONTRACTOR shall administer the Program. Program administration includes but is not limited to processing applications; providing customer service and administration; management of assessments and payments; and recruitment, training, and oversight of the Certified Contractors who perform approved energy-efficiency, renewable-energy, and water-conservation work.

Task 4.1: Property Owner Applications

CONTRACTOR shall do the following: (a) evaluate applications and process them on a first-come-first-served basis; (b) use an electronic system that will track submitted applications, monitor their status, and verify that PACE Assessments, once processed and approved, comply with the Policy Statement; and (c) timely communicate pre-approval, approval, and denial notifications to Program applicants.

Task 4.2: Eligible Project and Certified Contractor Selection

Once applications are submitted, property owners will coordinate with their Certified Contractors of choice to select items from the Eligible Improvements list that they are interested in installing. Because the Program is available only for Eligible Improvements, CONTRACTOR's software tools will limit funded projects only to Eligible Improvements the CITY authorizes. At all steps in the process, CONTRACTOR shall provide personal assistance to property owners — at the Outreach Center, on the phone, or by email — with completing applications and selecting certified contractors.

Task 4.3: Energy Savings Calculations – Audit

CONTRACTOR shall provide Certified Contractors with audit tools necessary to establish that the SIR of proposed projects is greater than one.

Task 4.4: Property Owner Bid Approval

Following project submittal, CONTRACTOR shall monitor project status throughout the bid-acceptance process. Once the property owner accepts a project bid, CONTRACTOR shall prepare the PACE Contract and present it to the property owner and the CITY for signature.

Task 4.5: Assessment Processing

Once a project is submitted for funding approval and assessment documentation, CONTRACTOR shall update its status electronically, and when a project is approved CONTRACTOR shall authorize the property owner and the Certified Contractor to obtain permits and commence construction.

Task 4.6: Incentive Processing

Certified Contractors may review each project application and verify whether proposed measures may qualify for utility or other incentives. CONTRACTOR shall develop an “energy incentive” guide to assist property owners during the process of choosing Eligible Improvements.

Task 4.7: Final Approval

Certified Contractors must obtain a final inspection of each completed project from the CITY’s building department. Following notification of receipt of the final inspection, and verification that all liens have been released, the property owner will approve the project and submit for payment.

Task 4.8: Record Notices of Assessment for Specific Properties

CONTRACTOR shall coordinate the timely recording of each financing agreement as required by AB 811.

Task 4.9: Program Status and Reporting

Using its Web Tool, CONTRACTOR shall provide to the CITY and other authorized persons, on demand and on a real-time basis, updates on Program status and Program data, including the following:

- (a) Website Analytics
- (b) Number of calls to the Program’s 800 number
- (c) Number of assessment applications requested
- (d) Number of completed assessment applications submitted
- (e) Number of assessment applications processed
- (f) Number of assessment applications approved
- (g) Program funding levels and total fund status
- (h) Certified Contractors and certification levels
- (i) Final inspections of completed projects
- (j) Energy saved through completed projects
- (k) Greenhouse-gas reductions achieved through completed projects
- (l) Estimated job creation impact of completed projects

Task 4.10: Property Owner Services in the CITY

CONTRACTOR shall provide dedicated customer service as follows:

- (a) Dedicated toll-free information line for property owners
- (b) Outreach Center open to public

- (c) Collateral materials on energy efficiency, Certified Contractors, incentives, etc.
- (d) On-line Web Tool to monitor projects and assist in completion
- (e) Dedicated property-owner service representatives fluent in English and Spanish;
- (f) Reporting on property-owner satisfaction

Task 5: Support

CONTRACTOR shall provide ongoing customer service and support.

Task 5.1: Website Development and Management

CONTRACTOR has developed an overall web architecture, Web Tool, and database and is dedicated to continuing to improve and expand its capability. CONTRACTOR shall provide all website maintenance, technical support, and updates for the Program.

Task 5.2: Ongoing Assessment Tracking and Management

Through Willdan Financial Services or, if the CITY so elects, through the CITY's contract provider, CONTRACTOR shall coordinate ongoing management and verification of assessments throughout the amortization term of the financing.

Task 5.3: Provide Certification, Training and On-going Support for Contractors

CONTRACTOR shall maintain an updated database of Certified Contractors and make training and education programs available within the CITY to ensure high quality and effective installation of improvements, to share best practices, and to provide a pathway for skill upgrades.

Task 5.4: CITY Staff and Property Owner Support

CONTRACTOR shall provide (a) password-protected, on-line access to real-time project data for properly authorized CITY staff and (b) in-person telephone and email access to information regarding assessments and annual installments for property owners and Program participants.

Task 5.5: Status Meetings and Coordination

CONTRACTOR shall participate in and, if needed, attend appropriate meetings of the City Council and its advisory committees and shall provide CITY staff with access to an administrative system that provides reports and status on the Program's operations.

PART II. CREATION AND COLLECTION OF PACE ASSESSMENTS

CONTRACTOR shall coordinate with Willdan Financial Services or CITY's financial-services consultant, Counsel, the City Attorney, and CITY staff to manage the legal and procedural considerations for placing PACE Assessments on county property-tax rolls. Willdan and Counsel have the expertise and credentials to oversee this important Program task on behalf of CONTRACTOR and the CITY. However, CONTRACTOR shall utilize the services of the CITY's financial-services consultant should the CITY so desire.

PART III. PROGRAM TIMELINES

CONSULTANT shall provide CITY staff with a pro-forma timeline spreadsheet for review.

PART IV. ELIGIBLE IMPROVEMENTS

Listed below are improvements that are Eligible Improvements under the Program. CONSULTANT and the CITY may jointly approve additional or alternative improvements on a case-by-case basis or may modify the list to comply with state law. Any rebates that are available to the property owner must be deducted from the PACE financing requested.

1. Energy-Efficiency Measures.

- (a) Air sealing and ventilation
- (b) Air filtration
- (c) Building envelope
- (d) Duct leakage and sealing
- (e) Bathroom, ceiling, attic, and whole-house fans
- (f) Insulation
- (g) Defect correction
- (h) Attic, floor, walls, roof, ducts
- (i) Weather-stripping
- (j) Sealing
- (k) Geothermal exchange heat pumps
- (l) HVAC systems
- (m) Evaporative coolers (coolers must have a separate ducting system from air conditioning and heating ducting system)
- (n) Natural-gas-storage water heater (Energy Star listed)
- (o) Tank-less water heater
- (p) Solar-water-heater system
- (q) Reflective insulation or radiant barriers
- (r) Cool roof
- (s) Windows and glass doors (U value of 0.40 or less and solar-heat-gain coefficient of 0.40 or less)
- (t) Window filming
- (u) Skylights
- (v) Solar tubes
- (w) Additional building openings to provide addition natural light
- (x) Lighting (Energy Star listed – no bulb, only retrofits)
- (y) Pool equipment (e.g., pool-circulating pumps)

2. Other Non-residential Building Measures.

- (a) Occupancy-sensor lighting fixtures

- (b) SMART parking-lot bi-level fixture
- (c) SMART parking-garage bi-level fixtures
- (d) SMART pathway lighting
- (e) SMART wall-pack fixtures
- (f) Task ambient office lighting
- (g) Classroom lighting
- (h) Refrigerator case LED lighting with occupancy sensors
- (i) Wireless daylight-lighting controls
- (j) Kitchen exhaust variable air-volume controls
- (k) Wireless HVAC controls & fault detection

3. Photovoltaic and Solar-Thermal Equipment.

- (a) Solar thermal hot water systems
- (b) Solar thermal systems for pool heating
- (c) Photovoltaic systems (electricity)
- (d) Emerging technologies (following the custom-projects track – see Section 5 below, “Custom Projects”).

4. Water-Conservation Measures.

- (a) Faucet aerators
- (b) Core-plumbing system
- (c) Gray-water system
- (d) Instantaneous hot-water heater
- (e) Recirculation hot-water system
- (f) Demand initiated hot-water system
- (g) Hot-water pipe insulation
- (h) Irrigation-control system
- (i) Irrigation system
- (j) Rainwater cistern
- (k) Low-flow showerhead
- (l) High-efficiency toilets
- (m) Demand water softener
- (n) Whole-house water-manifold system

The following water-conservation measures are approved for non-residential applications:

- (o) Cooling-condensate reuse
- (p) Cooling-tower conductivity controllers
- (q) Deionization
- (r) Filter upgrades
- (s) Foundation drain water
- (t) Industrial-process water-use reduction

- (u) Pre-rinse spray valves
- (v) Recycled water source
- (w) Urinals
- (x) Waterless urinals

5. **Custom Projects.** The custom-projects track is a process by which CONTRACTOR can evaluate and, in consultation with the CITY, approve funding for projects that are not “off the shelf” Eligible Improvements (“**Custom Projects**”). Custom Projects may involve large-scale industrial or commercial energy-efficiency improvements; processing or industrial mechanical systems; and renewable energy-generation from sources such as geothermal and fuel cells. The measures in Sections 5(a) through 5(k) below are examples of Custom Projects that will be considered for Program funding:

- (a) Building energy-management controls
- (b) HVAC duct zoning-control systems
- (c) Irrigation pumps and controls
- (d) Lighting controls
- (e) Industrial- and process-equipment motors and controls
- (f) Fuel cells
- (g) Wind-turbine power system
- (h) Natural gas
- (i) Hydrogen fuel
- (j) Other fuel sources (emerging technologies)
- (k) Co-generation (heat and energy)

PART V. PROGRAM TERMS

Set forth below are the disclosure requirements and underwriting terms for the Program (the “**Program Terms**”).

To apply for financing under the Program, property owners must read and accept the Program Terms and must execute the documents that are required for participation in the Program, which are described below in Section 7, “Funding,” (the “**Program Documents**”). Property owners should become familiar with and understand the Program Documents. By executing the Program Documents, a property owner agrees to comply with all of the Program Terms. The CITY reserves the right to amend the Program Terms from time to time in accordance with Section 14 below, “Changes to the Program Terms; Severability.”

1. **Purpose of the Program.** The Program is intended to provide property owners within the CITY with financing for the acquisition and installation of Eligible Improvements (“**PACE Financing**”). CONTRACTOR shall arrange PACE Financing using funds from private sources. Repayment of PACE Financing and recovery of Program costs will be through voluntary contractual assessments levied on commercial and industrial properties within the CITY that are owned by Program participants. Assessment installments will be collected with the property taxes in accordance with AB 811. Neither the CITY nor CONTRACTOR guarantees that PACE Financing is the best

financing option. Property owners should consult with their financial advisors to select the best financing option for their particular situations.

- 2. Summary of the Program Process.** As discussed in more detail below, to receive PACE Financing, property owners must complete the following steps:
- (a) Determine that they meet the eligibility requirements (see Section 3 below, “Eligibility”).
 - (b) Apply online or submit a paper application for the Program (see Section 4 below, “Application; Approval or Denial; Application Fee”).
 - (c) Agree to the Program Terms and pay an application fee as part of the application process.
 - (d) Notify each note holder that has a lien on the property (each, a “**Lender**”) of their intent to place a senior lien on the property.
 - (e) CONTRACTOR must approve the completed application (see Section 4 below, “Application; Approval or Denial; Application Fee”).
 - (f) A Certified Contractor must submit a bid for the installation of Eligible Improvements on the property (see Section 5 below, “Eligible Improvements; Certified Contractors”).
 - (g) The CITY shall record a Notice of Assessment against the property at the time of project approval.
 - (h) CONTRACTOR will authorize the release of funds to the property owner after project completion. Property owners may choose to assign payment directly to their contractor (see Section 7 below, “Funding”).
 - (i) Agree to pay the PACE Assessments in the amounts and at the times specified in the Funding Approval (see Section 8 below, “Financing Cost; Interest Rate”).

The CITY has contracted with CONTRACTOR to administer the program and CONTRACTOR may share information provided by property owners with third parties as necessary to administer the Program.

3. Eligibility.

- (a) PACE Financing is available for Eligible Improvements on improved commercial or industrial property within the CITY.
- (b) The Program requires a minimum funding request of \$2,500.
- (c) The maximum Program funding is determined by AB 811.
- (d) For PACE Financings of \$250,000 or less, the following underwriting requirements apply:
 - (1) Only Eligible Improvements may be financed through the Program.
 - (2) The property to be improved using PACE Financing (the “**Subject Property**”) must be located within the CITY and must be on the property-tax rolls.
 - (3) The property owner must provide each Lender with the Lender Notification of Senior Assessment Lien, which is available on line or from CONTRACTOR. This form notifies the Lender that the property owner intends to record against the Subject Property a lien for a voluntary contractual assessment that will be senior to existing liens.

- (4) Each holder of fee-simple title to the Subject Property must sign the Program Documents. Therefore, before submitting an application, a property owner must ensure that all holders of a fee-simple interest will agree to participate in the Program in accordance with the Program Terms.
- (5) The property owner must participate in applicable federal-, state-, utility-, and CITY-sponsored incentive programs, to the extent the project qualifies for such programs at the time of application and the programs do not conflict with Program requirements.
- (6) The property owner must agree to provide CONTRACTOR with access to the Subject Property's utility-usage records for up to two years prior to and following project processing to enable CONTRACTOR to monitor energy savings. The approved Utility Authorization Form is available on-line or from CONTRACTOR.
- (7) The property owner must be current in the payment of all obligations secured by the Subject Property (including loans, property taxes, assessments, and tax liens) and must have been current for all such obligations during the previous three years (or since the property owner has held title to the Subject Property, if for less than three years). CONTRACTOR may review public records and private credit histories, including county real-property records, to verify compliance with this requirement. Certain allowances may be made for delays in property-tax payment that do not reflect financial distress. The application of a property owner who is appealing a property-tax assessment will be reviewed, and the property owner's eligibility will be determined, on a case-by-case basis.
- (8) The total mortgage debt on the Subject Property must not exceed 85% of the market value of the Subject Property, derived from either an appraisal or an estimate of value based upon data supplied by CoStar Group, Inc. The phrase "**total mortgage debt**" means the total debt secured by the Subject Property before recordation of the PACE Assessment, including mortgages, promissory notes, equity lines of credit, and the aggregate principal amounts of any fixed special-tax liens and assessment liens on the Subject Property,.
- (9) The aggregate principal amount of the PACE Assessment on the Subject Property may not exceed 10% of the market value of the Subject Property, derived from either an appraisal or an estimate of value based upon data supplied by CoStar Group, Inc.
- (10) The total annual aggregate property taxes and assessments on the Subject Property, including the PACE Assessment, must not exceed 5% of the market value of the Subject Property, derived from either an appraisal or an estimate of value based upon data supplied by CoStar Group, Inc.
- (11) It is critical to the health of the Program that property owners pay in full, on a timely basis, all ad valorem property taxes, all special taxes, and all special assessments (including the PACE Assessment) and other obligations related to the Subject Property. Consequently, the CONTRACTOR reserves the right, in its sole discretion, to request supplemental information from owners and to deny applications based on any negative reports.
- (12) CONTRACTOR must conduct an energy audit for the Subject Property that predicts the utility-cost savings resulting from the Eligible Improvements. The audit must show that the utility-cost savings will be greater than the cost of installing the improvements over their useful life. This will provide a savings-to-investment ratio of greater than one (SIR>1) and ensure that, over the life of the improvements, the property owner has more money

available to pay the expenses of the property, including total mortgage debt (defined above in Section 3(d)(8)), than was the case before the PACE Assessment.

- (e) For PACE Assessments of more than \$250,000 but less than \$500,000 the following underwriting requirements apply:
 - (1) All of the requirements listed under Section 3(a) above.
 - (2) CONTRACTOR will open an escrow with a local title company and obtain title insurance that will protect the property owner and investors if there is a defect in the title to the Subject Property.
 - (3) The property owner must submit a Natural Hazard Zone Disclosure Report on the Subject Property. If the report indicates the possible presence of environmental contaminants, then CONTRACTOR will require that the property owner submit a Phase I Environmental Assessment for review by CONTRACTOR. Based on that review, CONTRACTOR may disapprove the property owner's participation in the Program.
- (f) For PACE Assessments of more than \$500,000, the following underwriting requirements apply:
 - (1) All of the requirements listed under Sections 3(a) and 3(b) above.
 - (2) The energy audit and determination of estimated energy savings must be conducted by an engineering firm that CONTRACTOR has determined to be qualified in the fields of energy efficiency and renewable-energy analysis.
 - (3) The property owner must obtain insurance that will guarantee the energy-cost savings, as predicted by the engineered audit, over the life of the Eligible Improvements.

4. Application; Approval or Denial; Application Fee. A property owner interested in applying to the Program must submit a completed Application Form to CONTRACTOR, either directly or through a Certified Contractor. The property owner may be required to pay a non-refundable \$50 application fee.

- (a) After receiving and reviewing the Application, CONTRACTOR shall give the property owner either a Notice of Eligibility or a Notice of Denial.
- (b) Upon receipt of a Notice of Eligibility, the property owner may proceed to submit a proposed project for review and approval (See Section 6 below, "Project Approval").
- (c) If the property owner receives a Notice of Denial, the notice will include recommended remedial action that may be available.

5. Eligible Improvements; Certified Contractors. The following general provisions apply to all projects submitted for PACE Financing:

- (a) Each property owner must consult with a Certified Contractor to ensure that improvements installed on the Subject Property qualify under the Program. Agreements used by Certified Contractors must address performance and other system-related issues to assist property owners.

- (b) The Program is a financing program only. The CITY and CONTRACTOR are not responsible for acquiring or installing the Eligible Improvements or ensuring their proper functioning.
- (c) Only Certified Contractors that meet CONTRACTOR's eligibility criteria for the work being financed may install the Eligible Improvements. CONTRACTOR's list of Certified Contractors may be obtained on-line or from CONTRACTOR. All work must be performed by a Certified Contractor to be eligible for PACE Financing.
- (d) Each property owner must deliver a Lender Notification of Senior Assessment Lien to each Lender, either by personal delivery or by U.S. Mail (certified mail, return receipt requested).

6. Project Development. After providing to CONTRACTOR evidence of delivery to each Lender of the Lender Notification of Senior Assessment Lien, the property owner may select a Certified Contractor and proceed to apply for PACE Financing in accordance with the following steps:

- (a) Select a contractor from the list of Certified Contractors available on-line and from CONTRACTOR. The property owner may obtain bids and advice from more than one Certified Contractor.
- (b) Work with one or more Certified Contractors to determine the scope and cost of the project, to analyze its energy savings and financial benefits, to confirm a SIR of at least one, and to verify that the proposed project qualifies for PACE Financing. Once the scope of the project is determined, obtain a formal bid from one or more Certified Contractors.
- (c) After reviewing the bid, select a Certified Contractor to complete the approval process with CONTRACTOR. Even if the project requires using more than one Certified Contractor for various aspects of the work (i.e., retrofit and solar), the property owner must select a lead Certified Contractor to process the project.
- (d) Upon review of the proposed project and the bid or bids submitted, CONTRACTOR will deliver to the property owner by email (unless the property owner directs otherwise) either a Project Approval Letter or a Project Denial Letter.
- (e) Once the project is approved, the property owner will be required to execute an Assessment Contract authorizing the CITY to record a Notice of Assessment on the Subject Property to secure the PACE Financing. The Notice of Assessment must be recorded before funds are committed and construction begins.
- (f) Once the Notice of Assessment is recorded, CONTRACTOR will issue a Notice to Proceed. Upon receipt of this notice, the property owner may sign construction contracts and authorize commencement of the project. If construction begins prior to receipt of a Notice to Proceed, the property owner runs the risk of not qualifying for PACE Financing.
- (g) If the project is denied, CONTRACTOR will issue a Project Denial Letter outlining remedial action that may be available.

7. Funding.

- (a) Upon completion of a project, either the Certified Contractor or the property owner must submit the below-listed documents to CONTRACTOR in order to request funding. CONTRACTOR will not disburse Program Financing until CONTRACTOR receives and verifies the following Program forms:
 - (1) A final sign-off on the building permit for the project from the authorized CITY building official.

- (2) Final invoices and lien releases from all Certified Contractors (including any sub-contractors) who worked on the project.
 - (3) An executed Project Completion Approval signed and notarized by all property owners. By executing the Project Completion Approval, the property owner (A) agrees to pay the PACE Assessments in specified amounts for the period specified in the Project Completion Approval, (B) consents to recordation of a Notice of Assessment against the Subject Property, and (C) releases CONTRACTOR and the CITY from any liability associated with installation of the Eligible Improvements or their performance or failure to perform.
 - (4) A Utility Authorization to Release Information.
 - (5) An Assignment of Right to Receive Financing Proceeds (if the payment is to be assigned to someone other than the property owner).
 - (6) A Settlement Statement.
- (b) If the property owner or the Certified Contractor does not submit the documents listed above to CONTRACTOR within seven calendar days after completion of the project, then the funding request will expire, and an updated funding request will be required if the property owner still desires to obtain PACE Financing. If the interest rate has changed between the date of the original funding request and any subsequent updated funding request, then the interest rate will be reset (see Section 8 below, "Financing Costs; Interest Rate").
 - (c) CONTRACTOR shall make a final determination of eligibility for the project and shall calculate the final PACE Assessment details. Upon the property owner's acceptance of the final determination of eligibility and the calculation of final assessment details, CONTRACTOR and the CITY shall (1) instruct the contract provider charged with administering the assessments, as appropriate under the circumstances; and (2) approve the issuance of checks as directed by the property owner, consistent with any applicable lien releases.
 - (d) If the property owner cancels PACE Financing after submitting a request for funding, then the property owner must pay all expenses incurred by the Program for recording and then removing the Notice of Assessment. The lien reflecting a PACE Assessment will remain in place until the property owner reimburses the Program for incurred costs.

8. Financing Costs; Interest Rate.

- (a) As used in this Section 8, the term "**Principal Amount**" means the total of all financed project costs. These may include costs associated with implementing the project such as permits, audit expenses, application fees, and capitalized interest (see Section 8(c) below, "Capitalized Interest").
- (b) To receive PACE Financing, a property owner must agree to a PACE Assessment in an amount equal to (1) the Principal Amount received from the Program, (2) interest on the Principal Amount, and (3) initial and on-going Program expenses. The CITY shall include the PACE Assessment on the owner's property-tax bill.
- (c) Interest Rate. The rate of interest charged on the amount funded will be fixed for the full term of the assessment. The rate will be determined on the date of submission of a valid funding request. Property owners can monitor interest rates on the Program website or by contacting CONTRACTOR.

- (d) Capitalized Interest. Because of administrative delays involved in placing the PACE Assessments on the county tax rolls, the payments may not appear on property-tax bills in the first year. In this case the first tax-year's installment may be added to the assessment. This will be itemized on the Settlement Statement.

9. Repayment Terms; PACE Assessments; Foreclosure Terms.

- (a) Repayment Terms. Following recordation of the Notice of Assessment, the property owner will be obligated to pay the PACE Assessment specified in the Project Approval and the Notice of Assessment.
- (b) Foreclosure. The property owner must pay the agreed-upon PACE Assessment regardless of personal financial circumstances, the condition of the property, or the performance of the Eligible Improvements. Property owners should not apply for PACE Financing if they are not certain they can meet the assessment obligations. The failure to pay the PACE Assessment in full or in part will result in negative financial consequences, including but not limited to penalties, interest, and possibly foreclosure. If property owners use an escrow account to pay their property taxes, they must notify their escrow companies of the PACE Assessments. In such cases, property owners will need to increase monthly payments to the escrow account by an amount equivalent to the annual PACE Assessment, divided by 12 months.

10. Compliance with Existing Mortgages. Recordation of the Notice of Assessment will establish a continuing lien as security for the obligation to pay the PACE Assessment. Under AB 811, this lien will be senior to all private liens, including existing trust deeds and mortgages. The Program thus requires property owners to notify Lenders before a funding request. Some mortgage and loan documents limit the ability of a property owner to place senior liens upon property without the consent of the Lender. Property owners will be responsible for consulting with their Lenders concerning such limitations, and neither the CITY nor CONTRACTOR will be responsible for a property owner's failure to comply with such limitations.

11. Transfer or Resale of the Subject Property. If a property owner sells the Subject Property before the end of the agreed-upon assessment period, the new owner will assume the obligation to pay the PACE Assessment. Ownership of any Eligible Improvements on the Subject Property will transfer to the new owner at the close of escrow. Eligible Improvements financed through the Program may not be removed from the Subject Property. The property owner must agree to make all legally required disclosures regarding the existence of the PACE Assessment lien on the Subject Property in connection with any sale.

12. Rebates and Taxes. Participation in the Program does not reduce rebates available through federal, state, utility-sponsored, or CITY rebate programs. More information on available programs can be found on-line or through Certified Contractors and other vendors. Program participants should consult with their tax advisors with respect to the state and federal tax benefits and consequences of participating in the Program. Neither the CITY nor CONTRACTOR is responsible for the tax consequences of participating in the Program.

13. Changes in State and Federal Law. CONTRACTOR's ability to continue the Program is subject to a variety of state and federal laws. If those laws or the judicial interpretation thereof changes after a property owner applies for the Program but before CONTRACTOR fulfills the funding request, then CONTRACTOR may be unable to fulfill the request. In such event, neither

CONTRACTOR nor the CITY will have any liability as a result of any such change in law or judicial interpretation.

14. Changes in Program Terms. A property owner’s participation in the Program is subject to the Program Terms in effect on the date of Project Approval for the property owner’s project.

- (a) CONTRACTOR may revise the Program Terms with the CITY’s approval, as follows:
 - (1) The City Manager shall determine, after consulting with the City Attorney, whether a revision is material or non-material. As used in this Section 14, “City Manager” includes the City Manager’s designee.
 - (2) The City Manager shall approve or disapprove non-material revisions.
 - (3) The City Council shall approve or disapprove material revisions.
- (b) CONTRACTOR may revise the underwriting standards to impose additional documentation requirements on property owners for participation in the Program.
- (c) No revision will affect a Program participant’s obligation to pay PACE Assessments as set forth in the Assessment Contract.

VI. FINANCIAL MODEL

- 1. **Funding Sources.** CONTRACTOR has entered into agreements with Barclays Capital and other funding sources (“**Funding Sources**”) to provide interim (warehouse) and long-term financing for the Program. CONTRACTOR is responsible for the administrative, marketing, legal, and other costs of operating the Program at no cost to the CITY. Like other financing programs, the Program is subject to market forces and interest-rate fluctuations that will require adjustments of rates and terms during operation of the Program to maintain viability.
- 2. **Operating Capital.** CONTRACTOR’s initial target interest rate for property owners participating in the Program is 7.00% (the “**Program Interest Rate**”). This is based on a current estimated cost of funds from Ygrene Funding, a separate entity from CONTRACTOR, of 6.50% (the estimated “**Funding Rate**”). This example results in an interest-rate spread of 0.05% to provide for the operating and administrative costs of the Program (“**Operating Capital**”). CONTRACTOR uses the Operating Capital for Program administration, marketing and Program development, legal and bond-counsel costs, CITY cost reimbursement, overhead, and profit. If the Funding Rate changes, then the Program Interest Rate may change to provide adequate Operating Capital.
- 3. **Fee Schedule.** In addition to the Operating Capital, CONTRACTOR relies on Program fees to fund operations. This fee structure minimizes up-front costs for property owners.

Fee Description	Amount	Collected
Application	Not to exceed \$50	Upon application submittal
Processing & underwriting	Not to exceed \$250	At disbursement
CITY cost recovery	Not to exceed \$100	At disbursement

Recording & disbursement	Not to exceed \$250	At disbursement
Escrow	\$100 - \$700 based on project size	At disbursement
Title insurance	\$400 - \$5,000 based on project size	At disbursement

* This fee schedule is subject to change, subject to the CITY’s approval in accordance with Section V.14. above. All fees except the application fee will be paid through the PACE Assessment.

4. **Contractor Training & Administration.** Funding for operation of the Contractor Certification, Training, Marketing and Project Oversight Programs includes a fee equal to not more than 3.0% of each project contract, charged by CONTRACTOR to Certified Contractors. Included in the services provided to Certified Contractors are lead-generation, conflict resolution, the Outreach Center, volume purchase agreements, meeting space and administrative services.
5. **Carbon Credits/Offsets.** The CITY will own and hold the carbon credits and offsets that result from projects financed through the Program (“**Carbon Credits**”). On behalf of the CITY, CONTRACTOR shall administer the accumulation and aggregation of Carbon Credits. At the close of each calendar year, the CITY shall assign 50% of accumulated Carbon Credits to CONTRACTOR. If a property owner qualifies for an incentive or rebate program that requires transfer of credits or offsets to an organization providing energy rebates or incentives, then CONTRACTOR, on behalf of CITY, and upon issuance of the rebate or incentive to the property owner, shall assign the rights thereto to that organization.
6. **Energy Efficiency Conservation Block Grant (EECBG) Funds.** Under Exhibit B, the CITY will make available to CONTRACTOR up to \$321,000 in EECBG funds. CONTRACTOR shall use the EECBG funds in furtherance of the Program in accordance with a Scope of Work to be developed between CONTRACTOR and the CITY. Funds must be used for the following:
 - (a) For development of administrative software for the Program
 - (b) For Program marketing and outreach.
 - (c) For a program to subsidize energy audits for prospective Program participants. Audits performed under this program will be reimbursed when projects are funded, thereby creating a partially sustainable revolving fund.

PART VII. PROGRAM FORMS

Following is a partial list of forms and documents that may be required for the establishment, operation, administration, financing, and reporting for the Program. These forms will be maintained through a document-management program that allows ongoing, password-protected access for authorized CITY representatives. Forms will be added, edited, and deleted as necessary for the operation of the Program.

- Task List
- Program Report

PACE Frequently Asked Questions
Schedule of Fees
List of Eligible Improvements
Assessment Underwriting Terms
Application & Documentation Checklist
Application
Financing Agreement
Truth in Lending
Lender Notification of Senior Assessment Lien
Project Bid & Contract
Funding Request Checklist
Utility Authorization to Release Information
Closing Checklist
Utility Authorization
Closing Checklist
Notice of Assessment
Assessment Contract
CA Assessment Underwriting Terms
Underwriting Policy
Project Submission Checklist
Project Approval Letter
Project Denial Letter
Notice to Proceed
Draw Request
Lien Release
Change Order Request Form
Final Building Permit Checklist
Assignment of Right to Receive Financing Proceeds
Wire Request Form
Escrow Instructions
Appraisal Report
Project Energy Savings Calculations & CO₂ Reductions
SIR Report

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** Except as provide in Section 5 below, CONTRACTOR shall perform the services described in Exhibit A (the "**Services**") at no cost to the CITY. The City is not obligated to compensate or reimburse CONTRACTOR from any public funds (including but not limited to the CITY's general fund) for CONTRACTOR's performance of the Services or for any costs CONTRACTOR may incur in the performance of the Services. CONTRACTOR's sole source of compensation for performance of the Services will be derived from the assessments paid by property owners who obtain financing from CONTRACTOR through the program described in Attachment 1 to Exhibit A (the "**Program**").
2. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement, authorizing such Additional Services, is approved by the CITY in accordance with the CITY's Supplemental Agreement procedures. The CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
3. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
4. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide the CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by the CITY arising out of CONTRACTOR's breach of this Section 4.
5. **Grant Funds.** The CITY will make available to CONTRACTOR up to \$321,000 in funds from an Energy Efficiency Conservation Block Grant ("**EECBG**") for use in (a) developing administrative software for the Program; (b) conducting Program marketing and outreach; and (c) conducting the energy audits described in Attachment 1 to Exhibit A (Part VI, Section 6). As noted in Section 9.B of Exhibit D, the CITY is required, as a condition precedent to CONTRACTOR's performance of certain Services, to bring a successful lawsuit for validation of the Program under Sections 860 through 870.5 of the California Code of Civil Procedure. The CITY's use of EECBG funds for the validation lawsuit, including any appeals, has priority over CONTRACTOR's use of the funds.

EXHIBIT C
PROFESSIONAL SERVICES AGREEMENT
FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*] Not furnish any facilities or equipment for this Agreement; or
 furnish the following facilities or equipment for the Agreement; [*list, if applicable*]

**EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and, if needed, CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "**Services**" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "**City Information**") that

are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- B. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- C. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection B, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

- 8. Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any

schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set as indicated by the dates in the signature blocks above (the "**Effective Date**").
- B. On the Effective Date, CONTRACTOR will begin performing those Services (defined in Exhibit B) required to assist in the formation of the Program (defined in Attachment 1 to Exhibit A) and to assist the CITY in validating the Program in accordance with Sections 860 through 870.5 of the California Code of Civil Procedure. As used in this Section 9.B, the phrase "formation of the Program" means all Services other than processing applications and funding projects. The following are conditions precedent to CONTRACTOR's obligation to perform the balance of the Services (the "**Commencement Conditions**"):
 - (1) the City Council's confirmation of the Report (defined in Attachment 1 to Exhibit A) in accordance with Section 5826.26 of the California Streets and Highways Code; and
 - (2) successful validation for the Program.
- C. CONTRACTOR shall commence performing the balance of the Services within ten (10) calendar days following fulfillment of the Commencement Conditions (the "**Commencement Date**").
- D. The Agreement will remain in effect for five (5) years from the Commencement Date (the "**Initial Term**") and will automatically renew for successive five (5) year Terms unless terminated in accordance with Section 9.E. below.
- E. Following the Initial Term, either party may notify the other of its intent to terminate the Agreement. In such event, the Agreement will terminate on the second (2nd) anniversary of the termination notice, at which date CONTRACTOR shall cease providing the Services.
- F. If the CITY terminates the Agreement in accordance with Section 9.E. above, then CONTRACTOR will be entitled to continue to offer the Services during the transition period so long as (1) CONTRACTOR does not approve any projects, completion of which is reasonably likely to extend beyond the termination date; (2) CONTRACTOR provides for on-going management of assessments related to any projects completed under CONTRACTOR's auspices; (3) CONTRACTOR continues to provide all of the

Services in a professional manner in accordance with the Agreement; (4) CONTRACTOR continues to work in good faith with the CITY to provide a smooth transition for either the termination of the Program or transfer to another administrator.

- G. CONTRACTOR may suspend the Program for up to six months if any of the following render PACE financing infeasible: (1) conditions in U.S. financial markets, (2) changes in AB 811 (defined in Attachment 1 to Exhibit A), or (3) changes in the CITY's authority to provide assessment-lien priority. If CONTRACTOR determines at the conclusion of the suspension period that conditions do not warrant resumption of the Program, then CONTRACTOR may request from the CITY an extension of the Program suspension for an additional six months. The CITY may, at its option, grant the extension or terminate this Agreement by giving CONTRACTOR one hundred eighty (180) days' advance written notice.
- H. A material failure to comply with any of the provisions of this Agreement will constitute a breach. If a party breaches any obligation under this Agreement, and if the breach is reasonably curable, then, within 30 days after receiving the non-breaching party's written notice of the breach, the breaching party shall make reasonable efforts to cure the breach until the breach is cured. Unless otherwise provided in this Agreement, the parties may proceed at law or in equity to enforce their rights under this Agreement.
- I. CONTRACTOR shall achieve annual aggregated assessment funding for the Program (the "**Financing Target**") of seven million five hundred thousand dollars (\$7,500,000), commencing on the first anniversary of the Commencement Date, and continuing annually thereafter during the Term. Annual results that exceed the Financing Target will be carried over to the following year. If CONTRACTOR fails to achieve at least seventy percent (70%) of the Financing Target in any year, then the CITY may terminate this Agreement by giving CONTRACTOR one hundred eighty (180) days' advance written notice.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY,

except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.

- B. Insurance Policies: Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverage described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. **Insurance Requirements.** During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts

involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical

handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. Entire Agreement. This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. Severability. If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
 - A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
 - C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas

and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Travel benefits
- Moving expenses
- Pension and retirement benefits
- Vacation
- Membership or membership discounts
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.



RESOLUTION NO. 2011-XXXX

Adopted by the Sacramento City Council

September 27, 2011

AWARD PROFESSIONAL SERVICES AGREEMENT TO YGRENE ENERGY FUND CALIFORNIA, LLC, TO ADMINISTER AND FUND A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM (G13000050)

BACKGROUND

- A. In 2009, City Council directed staff to develop and implement a Property Assessed Clean Energy Program (the “**PACE Program**”). Through the PACE Program, property owners within the City will be able to finance energy- and water-efficiency improvements to their property using voluntary contractual assessments authorized by Chapter 29 (beginning with section 5898.10) in part 3 of division 7 of the California Streets and Highways Code (“**Chapter 29**”).
- B. On March 2, 2011, the Department of General Services issued Request for Proposals No. P11131021001 to select a firm to administer and finance the PACE Program. From this RFP process, Ygrene Energy Fund, Inc. was selected as the most qualified and responsive firm, and it subsequently formed Ygrene Energy Fund California, LLC (“**Ygrene**”) for the PACE Program.
- C. Thereafter, working with Ygrene, the City prepared a report for the PACE Program, as required by Chapter 29 (the “**Program Report**”). On September 27, 2011, the City Council held a duly noticed public hearing on the Program Report. When the hearing concluded, the City Council confirmed the Program Report, which, as presented at the hearing, extended the PACE Program to both commercial and industrial properties.
- D. Having confirmed the Program Report, the City Council now desires to award a professional-services agreement to Ygrene, thereby formally appointing Ygrene as the administrator of the PACE Program. Under this agreement, Ygrene will administer the PACE Program and provide funding for it at no cost to the City, except as follows: the City will make available to Ygrene, from an Energy Efficiency Conservation Block Grant, up to \$321,000 in grant funds for the specific purposes of developing administrative software for the PACE Program, conducting marketing and outreach for the PACE Program, and conducting energy audits to confirm actual energy savings associated with the various energy-efficiency projects financed by the PACE Program. Sufficient funding exists to provide these grant funds to Ygrene (G13000050, Fund 2702, Operating Grants).

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Council hereby approves a professional-services agreement between Ygrene and the City, in the form attached to this resolution as Exhibit A; and the City Manager or the City Manager’s designee is hereby

authorized, on behalf of the City, to sign the professional-services agreement.

Section 2. The City Manager or the City Manager's designee is authorized, on behalf of the City, to sign assessment contracts with property owners who are eligible to participate in the PACE Program. The assessment contracts must be in the form attached as Exhibit E to the Program Report, and the projects covered by the assessment contracts must comply with the requirements of the PACE Program.

Section 3. Exhibit A is a part of this resolution.