

File No. 170484

Committee Item No. 16
Board Item No. 9

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee Date July 20, 2017

Board of Supervisors Meeting Date September 5, 2017

Cmte Board

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Completed by: Linda Wong Date July 13, 2017
Completed by: Linda Wong Date July 27, 2017

1 [Authorizing Inclusion of Figtree Property-Assessed Clean Energy ("PACE") Program in
2 California Enterprise Development Renewable PACE Programs]

3 **Resolution authorizing the inclusion of the Figtree Property-Assessed Clean Energy**
4 **("PACE") Program in the City and County of San Francisco's Renewable PACE**
5 **Program through the California Enterprise Development Authority; and authorizing the**
6 **California Enterprise Development Authority to conduct contractual assessment**
7 **proceedings and levy contractual assessments within the territory of the City and**
8 **County of San Francisco; and authorizing related actions, as defined herein.**

9
10 WHEREAS, The California Enterprise Development Authority is a joint exercise of
11 powers authority ("CEDA"), authorized and existing pursuant to Joint Powers Act
12 (Government Code Section 6500 *et seq.*) and that certain Joint Exercise of Powers
13 Agreement, dated as of June 1, 2006, of which the City and County of San Francisco ("City")
14 is an Associate Member, has adopted the Figtree Property Assessed Clean Energy (PACE)
15 and Job Creation Program ("Program" or "Figtree PACE"), to allow the financing of certain
16 renewable energy, energy efficiency, seismic retrofits, electric vehicle charging infrastructure,
17 and water efficiency improvements ("Improvements") through the levy of contractual
18 assessments pursuant to Chapter 29 of Division 7 of the Streets and Highways Code
19 ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness
20 ("Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections
21 8500 *et seq.*) ("1915 Act") upon the security of the unpaid contractual assessments; and

22 WHEREAS, Chapter 29 provides that assessments may be levied under its provisions
23 only with the free and willing consent of the owner of each lot or parcel on which an
24 assessment is levied at the time the assessment is levied; and
25

1 WHEREAS, The City desires to allow the owners of property ("Participating Parcel")
2 within its territory ("Participating Property Owners") to participate in Figtree PACE and to allow
3 CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the
4 1915 Act to finance or refinance the Improvements; and

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

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

11 WHEREAS, The ROI sets forth the territory within which assessments may be levied
12 for Figtree PACE which territory shall be coterminous with the County's official boundaries of
13 record at the time of adoption of the ROI ("Boundaries"); provided however, that a City
14 property owner may enter into contractual assessments with CEDA only after this Board has
15 adopted a resolution to authorize participation in the Program; and

16 WHEREAS, Pursuant to Chapter 29, the City authorizes CEDA to conduct assessment
17 proceedings, levy assessments, pursue remedies in the event of delinquencies, and issue
18 bonds or other forms of indebtedness to finance the Improvements in connection with Figtree
19 PACE; and

20 WHEREAS, To protect the City and its officers and employees in connection with
21 operation of the Figtree PACE program, Figtree Energy Financing, the program administrator,
22 has agreed to defend and indemnify the City for disputes arising from Figtree Energy
23 Financing's administration of its program; and

24 WHEREAS, The City will not be responsible for the conduct of any assessment
25 proceedings, the levy of assessments, or any required remedial action in the case of

1 delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued
2 in connection with Figtree PACE, now therefore, be it

3 RESOLVED, That Board finds and declares that the foregoing recitals are true and
4 correct; and, be it

5 FURTHER RESOLVED, That City hereby appoints CEDA as its representative to (i)
6 record the assessment against the Participating Parcels, (ii) administer the District in
7 accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the
8 California Streets and Highways Code (commencing with Section 8500 *et seq.*) ("Law"), (iii)
9 prepare or cause to be prepared program guidelines for the operations of the Program, and
10 (iv) as required, proceed with any claims, proceedings or legal actions as shall be necessary
11 to collect past due assessments on the properties within the District in accordance with the
12 Law and Government Code Section 6509.6 of the California Government Code; provided
13 however, nothing herein shall cause the City to be deemed to be an agent of Figtree or CEDA
14 as a result of the adoption of this Resolution; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors hereby finds and determines
16 that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will
17 provide significant public benefits, including without limitation, savings in effective interest
18 rates, bond preparation, bond underwriting and bond issuance costs and reductions in
19 effective user charges levied by water and electricity providers within the boundaries of the
20 County; and, be it

21 FURTHER RESOLVED, That in connection with Figtree PACE, the City hereby
22 consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any
23 Property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:
24 (1) Such proceedings are conducted by CEDA pursuant to one or more Resolutions of
25 Intention in substantially the form of the ROI;

1 (2) The Participating Property Owners, who shall be the legal owners of such property,
2 voluntarily execute a contract pursuant to Chapter 29 and comply with other applicable
3 provisions of California law in order to accomplish the valid levy of assessments; and

4 (3) The City shall not be responsible for the conduct of any assessment proceedings, the
5 levy of assessments, any required remedial action in the case of delinquencies in such
6 assessment payments, or the issuance, sale or administration of the Bonds in connection with
7 Figtree PACE; and, be it

8 FURTHER RESOLVED, That pursuant to the requirements of Chapter 29, CEDA has
9 prepared and will update from time to time the "Program Report" for Figtree PACE ("Program
10 Report," a copy of which is on file with the Clerk of the Board of Supervisors in File
11 No. 170484) and associated documents, and CEDA will undertake assessment proceedings
12 and the financing of Improvements as set forth in the Program Report; and, be it

3 FURTHER RESOLVED, That this Board hereby acknowledges that the Law permits
14 foreclosure in the event that there is a default in the payment of assessments due on a
15 property, and the Board hereby designates CEDA as its representative to proceed with
16 collection and foreclosure of the liens on the defaulting properties within the District, including
17 accelerated foreclosure pursuant to the Program Report; and, be it

18 FURTHER RESOLVED, That the Controller, the Executive Director of the Department
19 of the Environment, the Director of the Office of Public Finance and their respective designees
20 are hereby authorized and directed to make applications for Figtree PACE available to all
21 property owners who wish to finance Improvements; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby finds that adoption of
23 this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"),
24
25

1 because the Resolution does not involve any commitment to a specific project which may
2 result in a potentially significant physical impact on the environment, as contemplated by Title
3 14, California Code of Regulations, Section 15378(b)(4)); and, be it

4 FURTHER RESOLVED, The costs associated with the formation and administration of
5 the assessment district will be provided by CEDA, and the City shall have no liability or
6 responsibility therefor; and, be it

7 FURTHER RESOLVED, That the Controller, the Director of the Environment, the
8 Director of the Office of Public Finance and their respective designees are hereby authorized
9 and directed to execute and deliver such certificates, requisitions, agreements (including any
10 indemnity agreement provided to the City by Figtree) and related documents as are
11 reasonably required by CEDA in accordance with the Program Report to implement Figtree
12 PACE for Participating Property Owners; and, be it

13 FURTHER RESOLVED, That this Resolution shall take effect immediately upon its
14 adoption.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18
19 By: 

20 Mark D. Blake
21 Deputy City Attorney

22 n:\egana\as2017\1400080\01185389.docx

EXHIBIT A

CEDA Resolution of Intention

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

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

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

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

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

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

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

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the County.
- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.

- (d) A public purpose will be served by establishing a contractual assessment program, to be known as Figtree PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the County.

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

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

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

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

redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

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

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

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

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

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

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

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

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

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

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

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

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually

preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

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

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

PASSED AND ADOPTED this _____ day of _____, 201_____

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair

ATTEST:

Helen Schaubmayer, Assistant Secretary

SAMPLE

EXHIBIT B
Indemnification Agreement

INDEMNIFICATION AGREEMENT

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO AND
FIGTREE COMPANY, INC.**

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

RECITALS

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

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

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

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

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

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

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

1. **Indemnification.** Figtree has provided the CEDA with an indemnification for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents, arising from or related to the Figtree PACE Program, the assessments, the assessment districts, the improvements or the financing and marketing thereof. Figtree agrees to defend, indemnify and hold harmless the Public Entity, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury or damage due to negligence or malfeasance of any type claims as a result of the acts or omissions of Figtree, except for such loss or damage which was caused by the sole negligence or willful misconduct of the Public Entity. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Figtree.

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

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

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

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

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

If to the Administrator

Figtree Company, Inc.
9330 Scranton Road, Suite 600
San Diego, California 92121
Attn: Peter Grabell

If to the Public Entity:

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

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

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

APPROVED AS TO FORM:

Public Entity Attorney

Public Entity Name

By _____
Name:
Title:

Date: _____

Figtree Company, Inc., a California corp.

By _____
Name: Peter Grabell
Title: Senior Vice President

Date: _____

Wong, Linda (BOS)

From: Chien, Richard (ENV)
Sent: Tuesday, June 06, 2017 1:37 PM
To: Cohen, Malia (BOS); Yee, Norman (BOS); Tang, Katy (BOS); Kim, Jane (BOS); Sheehy, Jeff (BOS)
Cc: Farrell, Mark (BOS); Montejano, Jess (BOS); Sesay, Nadia (CON); Blake, Mark (CAT); Rodriguez, Guillermo (ENV); Wong, Linda (BOS)
Subject: June 8th Budget & Finance Committee Agenda Items 4, 5, 6, 7, 8, 9 and 10
Attachments: 6-8-17 PACE staff report_final.pdf; Open PACE FAQ for realtors.pdf

Dear members of Budget & Finance Committee (Supervisors Cohen, Yee, Tang, Kim and Sheehy):

I am writing in advance of this Thursday's Budget and Finance Committee hearing (where several PACE resolutions will be presented), to share some information related to recent press regarding residential PACE programs and provide you with additional background.

BACKGROUND

Since the Board voted in 2014 to reauthorize residential PACE programs in San Francisco, approximately \$8 million of private capital has been invested by the programs to help qualified homeowners install a range of energy efficiency, solar, and water conservation improvements on their properties, which will reduce energy consumption by nearly 25,000 MWh and save homeowners approximately \$6 million on their energy bills over the lifetime of the improvements.

PACE overcomes the main barrier to property owners making these types of investments into their buildings, which is the high upfront cost. Through its novel property-based structure, PACE expands property owner access to clean energy. PACE combines local government participation, private capital, and business innovation to deliver positive, mutually beneficial outcomes.

By supporting adoption of the new resolutions to allow three new PACE providers to be able to work in San Francisco, we will be stimulating private competition, expanding access to homeowners, and introducing a small commercial option (currently a gap for the nonresidential sector), while ensuring the highest levels of consumer protections and transparency.

CONSUMER PROTECTION AND TRANSPARENCY

Here are examples of how PACE stakeholders and policy makers are working together to strengthen and enhance consumer protections and increase transparency:

1. ABAG Regional Collaborative Services Agreement (included in your package)

- This agreement between ABAG and residential PACE Providers mandates clear guidance on enhanced consumer protections, data sharing for program performance monitoring, and promoting coordination with existing ratepayer-supported energy program incentives for programs active in the 9 county region.

2. AB 2693 – Bill went into effect on January 1, 2017 and mandates minimum disclosures for all PACE programs similar to the Mortgage Industry’s “Know Before You Owe” Form including:

- 3-DAY RIGHT to CANCEL
- Clear Financing Statement w/ APR and total financing obligation
- 64+ year old additional call backs to confirm terms
- The bill was originally sponsored by the California Association of Realtors and supported by the PACE industry.
- The CSCDA Open PACE program already provided for the requirements in AB 2693 under its consumer protection policies adopted in December, 2015. The additional legislation simply codifies in statute what had

3. SB 242 – This bill currently in the State legislature, incorporates additional consumer protections and other best practices recommended by PACE Nation (national non-profit) and the U.S. Department of Energy, including provisions that require:

- PACE contractors are properly licensed
- Consumers are evaluated for the ability to pay back the assessment
- Payment relief and protection is provided if the borrower faces temporary financial hardship
- Requires the California Energy Commission (CEC) to establish and maintain list of eligible energy measures

4. CSCDA “Open PACE” and WRCOG’s consumer protections standards (adopted by the two major sponsor JPA’s in 2016)

- The baseline consumer protection policies of the two major sponsoring JPA’s overseeing the largest PACE program operators in California (CaliforniaFIRST and HERO) cover the following areas: (1) Eligibility and Risk, (2) Disclosures and Documentation, (3) Financing Terms, (4) Operations, (5) Post Funding Property Owner Support, (6) Data Security, (7) Privacy, (8) Marketing and Communications, (9) Protected Classes, (10) Participating Contractor Requirements, (11) Eligible Measures, (12) Maximum Cost per Measure, (13) Reporting, (14) Closing & Funding and (15) Oversight.

5. U.S. Department of Energy Best Practices Guidelines – incorporated wide range of stakeholder input to develop and issue “best practices for residential PACE,” including consumer protections issues.

We strongly believe that these efforts will only help residential PACE continue to be the most effective clean energy financing program in history. The department will continue to monitor and work with PACE providers and consumer advocates to ensure the program continues to deliver quality services in an open and fair way for all interested.

Attached are my staff report which should be included in your packet for Thursday’s meeting, as well as a general PACE FAQ from CSCDA (the JPA sponsor of the ‘Open PACE’ program, which includes CaliforniaFIRST).

Please contact me with any questions you may have. Thank you.

Rich

Richard Chien

Senior Program Specialist

San Francisco Department of the Environment

1455 Market Street, Suite 1200, San Francisco, CA 94103

richard.chien@sfgov.org (415) 355-3761



SF Environment
Our home. Our city. Our planet.
A Department of the City and County of San Francisco

Edwin M. Lee
Mayor

Deborah O. Raphael
Director

June 8, 2017

To: Honorable Board of Supervisors, Budget and Finance committee
From: Richard Chien, Department of the Environment, 415-355-3761
Subject: Department Staff Report Pertaining to Property Assessed Clean Energy (PACE) Programs
File numbers 170481, 170485, 170484, 170482, 170483, 170486
CC: Supervisor Mark Farrell, Mark Blake, Nadia Sesay, Mawuli Tugbenyoh

RECOMMENDATION

1. Regional Collaborative Services Agreement (RCSA) *File No. 170481*

Authorize the Director of the Department of the Environment to approve and sign the Association of Bay Area Governments (ABAG) member acknowledgement addendums of the Regional Collaborative Services Agreement (RCSA), designed to improve PACE program implementation and consumer protections, as executed between ABAG and the following Residential PACE Providers (RPP's):

1. AllianceNRG Program
2. California HERO Program
3. E3 PACE Program
4. Figtree PACE Program
5. PACE Funding Program
6. YgreneWorks PACE Program

2. Membership in additional PACE Programs

Board of Supervisors to adopt resolutions authorizing execution of agreements consenting to opt-in to the three additional PACE programs listed below:

1. E3 PACE Program *File No. 170485*
2. Figtree PACE Program *File No. 170484*
3. YgreneWorks PACE Program (requires 3 Resolutions, see below) *File No. 170482, 170483, 170486*

3. Clarification regarding CSCDA 'Open PACE' Program, and adding Program Administrators *File No. 170480*

Adopt one Resolution clarifying that as CSCDA Open PACE adds new PACE program administrators in the future, they are automatically authorized for San Francisco.

SUMMARY

This staff report recommends three distinct but related actions. The first recommendation is for the City to sign-on to the ABAG Regional Collaborative Services Agreement (RCSA), which establishes consumer protection standards and other best practices for residential PACE program administrators.

The second staff recommendation is to authorize three new PACE programs that have already signed on to the RCSA to operate in the City and County of San Francisco.

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The third is to clarify that the CSCDA 'Open PACE' program (which was authorized by the Board through prior resolutions for our (3) existing PACE providers), has added and may add additional PACE program providers in the future, and that these would automatically be authorized for San Francisco without additional Board of Supervisors approval or action.

FISCAL IMPACTS OF RECOMMENDATIONS

The department has determined the adoption of the resolutions and actions contained herein would not result in any additional costs to the City. All costs of marketing, financing, and program administration are borne by the program administrators; normal administrative costs to the City for recording assessments on property records and for collecting PACE assessment payments are recoverable through the financing origination and repayment process (detailed in the various resolutions).

1. Regional Collaborative Services Agreement (RCSA)

ABAG developed the RCSA in 2016 to make it easier for cities to vet and approve residential PACE providers (RPP's), especially in light of the rapid expansion of residential PACE in the region. It requires consistent application of consumer protections and data sharing policies for each RPP. Of the three PACE programs currently operating in San Francisco (Alliance NRG, CaliforniaFIRST, and HERO), two have signed the RCSA while ABAG is currently working with the third to complete the Agreement. As new RPP's enter into the Agreement with ABAG, local governments can have confidence that the RPP is following best practices; however the RCSA does not replace the need for the City to pass required resolutions to authorize RPP's in the future, should it choose to do so. The RCSA covers residential PACE programs only; commercial PACE programs were not included in the RCSA because they tend to be highly customized, have built-in protections (e.g. lender consent), and the transactions do not lend themselves to standardization.

While the RCSA is an agreement between ABAG and RPP's, it also states that it applies to RPP's operating in local jurisdictions that execute the "acknowledgement addendum."

Features of the RCSA include:

- Designates ABAG as the liaison to the RPP's locally regarding implementation of the Agreement
- Requires all RPP's to have clearly visible disclosures regarding the Federal Housing Finance Authority's (FHFA) policies on residential PACE programs¹
- Requires all RPP's to participate in the state's PACE Loss Reserve program, which mitigates potential risk to first mortgage lenders by making them whole for losses incurred due to the existence of a first-priority PACE lien on a property during foreclosure or forced sale.
- Limits claims that RPP's (or their designated contractors) can make to property owners regarding tax treatment of PACE assessments
- Requires data sharing between the RPP's and local governments to monitor program performance locally and improve reporting
- Clarifies that RPP's are responsible for negligence in administering PACE programs

¹ In July 2010, the Federal Housing Finance Agency (FHFA) which oversees home mortgage securities entities Fannie Mae and Freddie Mac, objected to the priority lien status of residential PACE financing and announced they would not purchase mortgages for homes with PACE obligations, due to concerns that PACE loans will be paid first in the case of foreclosure. This announcement slowed the residential PACE market for several years. In response, in 2013 Governor Brown signed SB 96, which created a \$10 million PACE Loan Loss Reserve to make mortgage lenders whole during a foreclosure or a forced sale of a property with a PACE assessment. While the FHFA has not officially changed its position to date, the California PACE market has rapidly grown with the assurance of the state reserve.

2. Membership in additional PACE Programs

The City and County of San Francisco has, through resolutions passed by the Board in 2014, already authorized three PACE programs:

- California HERO Program <https://www.heroprogram.com/ca/sanfrancisco>
- AllianceNRG <https://www.alliancenerg.com/retail/>
- CaliforniaFIRST <https://californiafirst.org/>

Adding new PACE providers that have signed the RCSA will increase financing options and contractor resources for homeowners, and support private sector innovation and investment all while backed by robust consumer protections. Note: authorizing these providers now will not limit the Board's ability to rescind membership, or consider additional providers, at any later date. The Board's approval of the any PACE program is limited to making the PACE financing option available to individual property owners who voluntarily decide to use it.

Staff recommend that the Board authorize local participation by the following three programs, whose administrators have signed the RCSA but which have not yet been approved by the Board to provide PACE services within the City and County of San Francisco:

- California Enterprise Development Authority (CEDA) / Figtree PACE Program (proposed)

The Figtree PACE Program requires membership in the California Enterprise Development Authority (CEDA), of which San Francisco is already a member. The Figtree PACE Program has primarily served commercial, industrial, and multifamily properties, and is planning to launch a single-family residential offering later this year. Since its launch in 2011, 180 cities and counties in California have adopted the program. More than \$16 million in financing has been approved for commercial projects. The program has 75 contractors providing services in the Bay Area.

- Golden State Finance Authority (GSFA) / YgreneWorks PACE Program (proposed)

The Ygrene PACE Program requires Board of Supervisors approval of membership in the Golden State Finance Authority (GSFA) JPA, which sponsors this program that serves residential and commercial projects. In California, over 180 cities and counties have adopted the program since its launch in 2013. To date, the program has approved financing of more than \$1.1 billion and has certified 2,532 contractors in California. Because of the unique nature of the GSFA/YgreneWorks program, two Resolutions are required for authorization. The first Resolution would make all properties in San Francisco eligible to participate in GSFA's Community Facilities District (CFD) for PACE financing as authorized under SB 555 (2011). The second Resolution would make all properties in San Francisco eligible to participate in GSFA's Contractual Assessment program for PACE authorized under AB 811 (2009), which is similar to the other PACE programs presented for council consideration in this item.

- California Municipal Finance Authority (CMFA) "Open PACE" Program (proposed)

The California Municipal Finance Authority (CMFA) JPA, of which San Francisco is a member, sponsors Energy Efficient Equity (E3) which serves residential property owners; CMFA also sponsors three other commercial PACE providers (Blue Flame, Structured PACE, and ON PACE). CMFA's "Open PACE" Program launched in August 2015 and operates under AB 811. CMFA is utilizing the Open PACE structure (similar to CSCDA's) with the goal of creating a platform to vet and pre-qualify multiple PACE providers so that local governments only need to pass a single resolution to authorize multiple programs. Any additional PACE programs that are qualified under CMFA's Open PACE after the adoption of the CMFA Open PACE resolution by the City will automatically be authorized to operate within San Francisco.

3. Clarification regarding CSCDA 'Open PACE' Program, and inclusion of new PACE Administrators

CSCDA's 'Open PACE' program, which the Board of Supervisors approved joining in 2014 (for CaliforniaFIRST and Alliance NRG), adds additional PACE Providers to their program from time to time. Since 2014, CSCDA updated their approach such that in jurisdictions that had previously opted-into Open PACE, any new PACE providers would automatically become authorized for that local jurisdiction without further Board or Council action. This specific approach was not included in our 2014 resolutions, and we recommend adding this language to clarify this process.

ENVIRONMENTAL SUSTAINABILITY

Supporting an expanded PACE marketplace helps the City reach its Climate Action Strategy goals, which calls for a 2.5% decrease in energy consumption across all buildings annually until 2030, and to achieve a 100% renewable energy economy in San Francisco by 2030.

RATIONALE FOR RECOMMENDATION

1. Regional Collaborative Services Agreement (RCSA)

The RCSA was developed by ABAG to improve transparency and reporting standards. While the Agreement is between ABAG and RPP's, the language of the agreement states that it also applies to actions of the RPP in participating cities, such as San Francisco, that chose to authorize PACE programs with RPP's. This information will not only safeguard consumer interests, it will also allow for better tracking of energy efficiency and solar projects for tracking climate action outcomes.

2. Membership in additional PACE Programs

A competitive marketplace provides a variety of options for homeowners to finance improvement projects based on finance terms, conditions of approval, and eligible measures offered by the different programs. Additionally, authorizing multiple providers ensures that financing will remain available if one or more providers cease to operate in San Francisco. Finally, it is anticipated that there will be increased economic activity as a result of each new provider operating locally.

3. Clarification regarding CSCDA 'Open PACE' Program

To become consistent and current with our existing PACE financing partner, CSCDA, and its' PACE program providers.

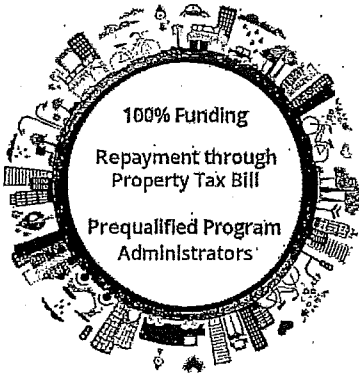
CONTACT PERSON

Richard Chien, Department of the Environment, 415-355-3761

ATTACHMENTS:

1. Resolution to authorize the Director of the Department of the Environment to approve and sign the Association of Bay Area Governments (ABAG) member acknowledgement addendums of the Regional Collaborative Services Agreement (RCSA).
 - Fully Executed RCSA between PACE providers and ABAG and Membership Acknowledgement Forms
 - AllianceNRG executed RCSA (AllianceNRG - ABAG Member Acknowledgement Form)
 - E3 executed RCSA (E3 - ABAG member Acknowledgement Form)
 - Figtree executed RCSA (Figtree - ABAG member Acknowledgement Form)
 - HERO executed RCSA (HERO - ABAG member Acknowledgement Form)
 - YgreneWorks executed RCSA (YgreneWorks - ABAG member Acknowledgement Form)
2. Resolution to opt-in to E3 PACE Program, sponsored by CMFA
3. Resolution to opt-in to Figtree PACE Program, sponsored by CEDA
4. Resolutions to opt-into GSFA/YgreneWorks Program

- Agreement between CCSF and GFSB regarding the collection of PACE assessments and/or special taxes
- Resolution authorizing an agreement regarding the collection of PACE assessments and/or special taxes



The Facts about CSCDA's Open PACE Program

CSCDA has received questions from cities, counties and property owners about its Open PACE program. The following answers those questions that have been raised.

1. *The five administrators under the CSCDA Open PACE program provide disclosures to property owners as required under AB 2693 and beyond.*
 - AB 2693 (2016), which went into effect on January 1, 2017 mandates minimum disclosures for all PACE programs similar to the Mortgage Industry's "Know Before You Owe" Form including:
 - 3-DAY RIGHT to CANCEL
 - Clear Financing Statement w/ APR and total financing obligation
 - 64+ year old additional call backs to confirm terms
 - The bill was originally sponsored by the California Association of Realtors and supported by the PACE industry.
 - The CSCDA Open PACE program already provided for the requirements in AB 2693 under its consumer protection policies adopted in December, 2015. The additional legislation simply codifies in statute what had largely been standard business practice for the Open PACE program.
2. *Homeowners are not required to pay off their PACE lien when they sell or refinance.*
 - PACE liens may stay with the property in almost every scenario during a sale or refinance.
 - Transferability of the PACE lien is typically a point of negotiation between seller, buyer, and lender.

- The Federal Housing Administration and Veterans Administration (FHA and VA Loans) will finance with PACE liens on title and allow the PACE lien to remain.
 - FHFA (Fannie Mae & Freddie Mac/Conventional loans) require contractual subordination of the PACE lien.
 - Open PACE program administrators have and will subordinate to the satisfaction of the lender.
3. ***Special assessments have been permitted and financed in California for over 100 years.***
- PACE is a voluntary special assessment that was authorized by the California Legislature. It is a variation of existing assessment district and community facility district laws that has been in place in California for over 100 years.
 - Over 2,700 special assessment districts exist in the California – which are an essential infrastructure and economic development tool for local governments – and all of the assessments are senior to the first mortgage just as PACE is.
4. ***The Open PACE program has multiple layers of governmental oversight.***
- Underwriting for PACE loans was established and is monitored by the California State Treasurer's Office.
 - Disclosures for PACE loans are set by the California Legislature.
 - CSCDA adopted stringent consumer protection policies in December 2015.
 - Cities and counties have the ability both to opt in and, importantly, to opt out *without cause if they have concerns with a PACE program* providing unfettered local control.

5. ***The Open PACE program provides significant consumer protections between a property owner and contractor***

Open PACE programs provide more consumer protections than almost all other traditional financing options. Open PACE programs:

- Require contractor licensing,
- Approve only high-efficiency measures, verify work, require permits and provides a dispute resolution process.
- Provides final payment to the contractor only after the homeowners agrees that the work has been done to the homeowner's satisfaction
- Monitor contractors and penalize them for poor performance, including kicking them out of the Open PACE program.

6. ***PACE programs will not cause another housing crisis.***

There are several reasons why PACE will not cause another housing crisis:

1. PACE only finances measures that reduce energy and water bills. This increases a homeowner's ability to repay the mortgage.
2. In the first economic study of homes with PACE upgrades, three different methodologies and three home price indices were examined and all turned up the same results; PACE is good for the resale value of homes, even after taking into account the financing costs.
http://www.iinews.com/site/pdfs/JSF_Winter_2016_PACENation.pdf
3. California State Treasurer's Office regulations prevent a homeowner from encumbering the property with a PACE lien that, combined with the mortgage balance, would exceed 100% of the fair market value of the property.
4. PACE does not accelerate in the event of a default. Only the amount in arrears is due.
5. Property owners with a PACE assessment have higher property tax repayment rates than the state average.

7. ***CSCDA encourages property owners to review all of its options for financing to determine what their best option may be.***

- PACE is a voluntary program. As with any financing decision, property owners should compare terms and features across financing options.

- PACE interest rates are consistent with long-term, fixed interest rate financing, such as Home Equity Loans (HELs)
 - Unsecured loans often have much shorter repayment terms, and comparable or higher interest rates, which lead to higher monthly/annual payments for the homeowners, which may be undesirable at best, and unsustainable at worst.
 - The lowest cost financing on the market is a variable rate home equity line of credit (HELOC), which can start below 3%. Fewer than 15% of California homeowners have a HELOC in place, and many cannot wait the 30-45 days it takes to secure a HELOC (or HEL) when their A/C needs replacement in the summer.
8. *The Open PACE consumer protection policies do not permit contractors to use aggressive marketing practices that target the poor and elderly.*
- Complaints about aggressive contractors occurred well before PACE was in the market, regardless of the financing programs the contractor was offering.
 - Open PACE is one of the only financing options with strong protections against aggressive marketing practices.
 - All Open PACE contractors must agree to a code of conduct and are penalized if they use aggressive tactics or misrepresent the program.
 - PACE call centers have multi-lingual staff to support non-English speakers.
 - 100% of property owners over 64 years old receive a follow up call to ensure they understand the terms of the PACE contract.
 - By state law (AB 2693), PACE also includes a three day right of rescission for anyone who changes their mind.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 24, 2017

File No. 170484

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Gibson:


On April 25, 2017, the Supervisor Mark Farrell introduced the following legislation:

File No. 170484

Resolution authorizing the inclusion of the Figtree Property-Assessed Clean Energy ("PACE") Program in the City and County of San Francisco's Renewable PACE Program through the California Enterprise Development Authority; and authorizing the California Enterprise Development Authority to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City and County of San Francisco; and authorizing related actions, as defined herein.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board


By: Linda Wong, Assistant Clerk

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2017.06.06 15:25:51 -0700

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the City Controller
Deborah Raphael, Director, Department of the Environment
Nadia Sesay, Director, Controller's Office of Public Finance

FROM: Linda Wong, Assistant Clerk, Budget and Finance Sub-Committee

DATE: May 24, 2017

SUBJECT: LEGISLATION INTRODUCED

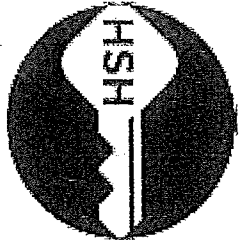
The Board of Supervisors' Budget and Finance Sub-Committee has received the following proposed legislation:

File No. 170484

Resolution authorizing the inclusion of the Figtree Property-Assessed Clean Energy ("PACE") Program in the City and County of San Francisco's Renewable PACE Program through the California Enterprise Development Authority; and authorizing the California Enterprise Development Authority to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City and County of San Francisco; and authorizing related actions, as defined herein.

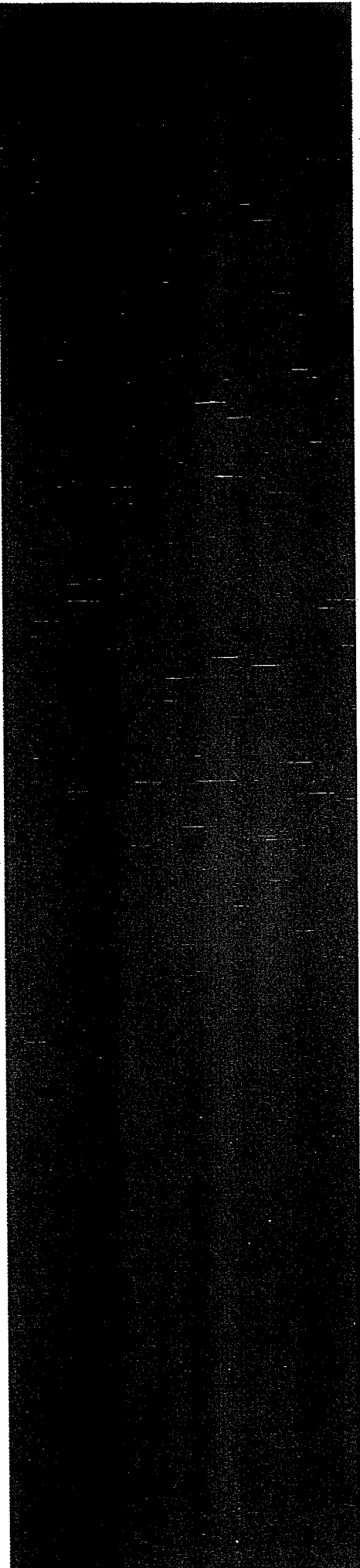
If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

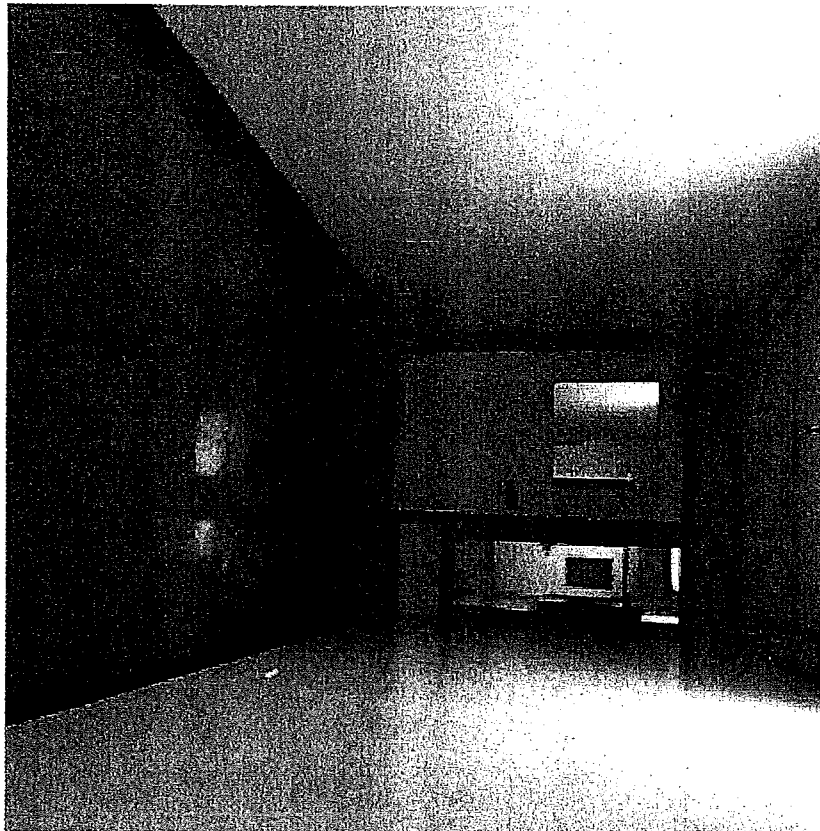
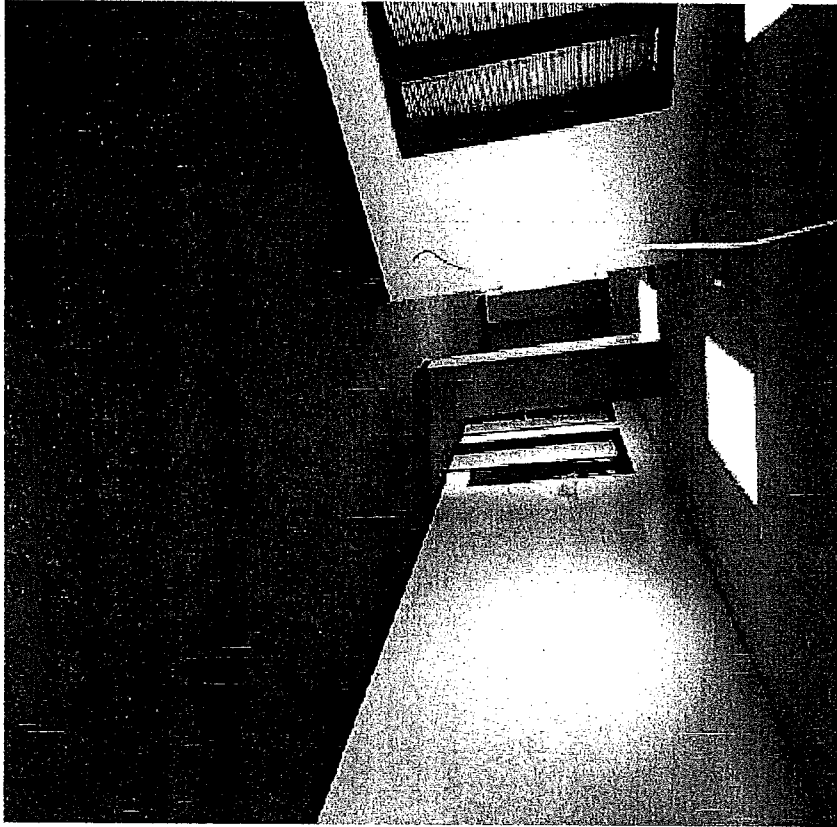
c: Todd Rydstrom, Office of the City Controller
Guillermo Rodriguez, Department of the Environment



DEPARTMENT OF
HOMELESSNESS AND
SUPPORTIVE HOUSING

July 20, 2017
Budget and Finance Committee
Presentation





440 Turk Street Site

New FY17-19 Investments Resources for Street Homelessness

- New 24/7 Resource Center – Funding to open and operate a 24-hour/7 days-a-week resource center to provide respite from the street and service connection.
- Leverages \$10.3 million in 2016 G.O. Bond Funding designated for homeless services expansion and shelter renovations
- Leverages \$9.45 million in Whole Person Care Round 2 Funding (50% new funding from state Medical waiver)
 - \$350k in one-time funding for start-up costs
 - \$500k one-time incentive payment for opening resource center in 2018
 - Approximately \$8.6 million for Resource Center services through 2020

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2017 APR 25 10:11:13
Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Use check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

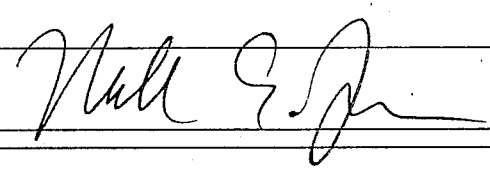
Supervisor Mark Farrell

Subject:

Resolution - Consent to Inclusion of City Properties in California Enterprise Development Renewable PACE Program --- Property Assessed Clean Energy Programs.

The text is listed below or attached:

Attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

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