



RESOLUTION NO. 2011-4

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, APPROVING THE FORMATION OF AN ENERGY AND WATER EFFICIENCY CONTRACTUAL ASSESSMENT DISTRICT AND ADOPTION OF AND PARTICIPATION IN THE PACIFIC HOUSING & FINANCE AGENCY'S CALIFORNIA PROPERTY ASSESSED CLEAN ENERGY (CALIFORNIA PACE) PROGRAM AND CONFIRMING THE RELATED REPORT PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND THE BOUNDARIES OF THE ASSESSMENT DISTRICT AND THE LEVY OF CONTRACTUAL ASSESSMENTS AND AUTHORIZING EXECUTION OF DOCUMENTS AND CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

RECITALS:

WHEREAS, the City of Fresno (the "City") is a municipal corporation organized and existing pursuant to the laws of the State of California; and

WHEREAS, the Pacific Housing & Finance Agency (the "PHFA"), a joint powers financing agency in which City is a member, has established an energy and water efficiency assessment financing program known as the California Property Assessed Clean Energy (California PACE) program (the "Program") pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the "Act"); and

WHEREAS, through its California PACE Program, the PHFA facilitates voluntary contractual financing to property owners within PHFA's participating member jurisdictions for the financing of energy and water saving property improvements; and

WHEREAS, the PHFA Program provides a plan of financing and allows for the administration of the assessment district formed by a member jurisdiction, pursuant to the Act, with such financing to be secured solely by the voluntary contractual assessment lien given by the participating property owner; and

WHEREAS, on December 16, 2010, the City Council adopted its Resolution No. 2010-292 (the "Resolution of Intention"), incorporated herein, declaring its intention to form an energy and water efficiency assessment district pursuant to the Act for the purpose of participating in the PHFA California PACE Program to finance distributed generation renewable energy sources and energy and water efficiency improvements within the geographical boundaries of the City, and described the proposed funding of the California PACE Program solely from the proceeds of bonds issued by the PHFA; and

WHEREAS, the Resolution of Intention ordered the City's Authorized Officer to consult with the County of Fresno Auditor-Controller's Office in order to reach an agreement with the County regarding the collection of the contractual assessments by the County on the tax roll, and

Adopted 1-13-11  
Approved 1-13-11  
Effective 1-13-11

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to prepare and file a report (the "Report") in accordance with Section 5898.22 of the Act and said Report has been filed with the City Clerk and is incorporated herein; and

WHEREAS, the Resolution of Intention set the time and place for a public hearing on the proposed formation of the assessment district as January 13, 2011, at 10:00 a.m.; and

WHEREAS, on January 13, 2011, following notice duly given in accordance with law, provided that the electricity and water providers within the proposed district, Pacific Gas and Electric Company and the City of Fresno Department of Public Utilities respectively, have each waived statutory notice, the City Council held a full and fair public hearing at which interested persons were afforded the opportunity to object to, inquire about, or provide evidence with regard to the proposed assessment district or any of its particulars, including the extent of the area proposed to be included within the assessment district, the terms and conditions of the draft contract (described below), and the proposed financing provisions; and

WHEREAS, the Report contains (a) a map showing the boundaries of the assessment district as the geographical boundaries of the City, (b) a draft application for participation in the Program (the "Application"), (c) a draft contract (the "Contract") specifying the terms and conditions upon which a property owner and the PHFA agree to participation in the California PACE Program, (d) a statement of public agency policies concerning contractual assessments including: (1) identification of types of facilities, distributed generation renewable energy sources, or energy and water efficiency improvements that may be financed through the use of contractual assessments (the "Authorized Equipment List"), (2) identification of a public agency official to direct the Executive Director of PHFA to enter into the Contract on behalf of the assessment district, (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 of contractual assessments, (e) a plan of financing including the issuance of bonds by the PHFA, (f) a statement of, or method for, determining the interest rate and time period during which contracting property owners would pay assessments, (g) the establishment of any reserve fund or funds, (h) the apportionment of all or any portion of the costs incidental to financing, administration of the assessment district between the assessment district and contractual assessment property owners, and (i) a report on the results of the consultations of the County Auditor-Controller's office; and

WHEREAS, the City Council, having considered all oral and written testimony, desires to approve the formation of the energy and water efficiency contractual assessment district and participation in the California PACE Program, upon the terms and conditions herein; and

WHEREAS, the PHFA shall be solely responsible for administering the Program, contracting with participating property owners, providing Program financing including issuance of bonds subject to judicial validation proceedings, and enforcing Program assessments, and such contracts and bonds shall not be an obligation or debt of the City, nor shall the City's faith and credit, general fund, bonding capacity or taxing authority be obligated or pledged hereunder to any extent.

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NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FRESNO HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The above recitals are all true and correct and are incorporated herein by this reference.

Section 2. The City Council declares that the Report as filed is hereby confirmed, provided that in the event of any conflict between the Report and this resolution, this resolution shall control and take precedence.

Section 3. The City Council hereby establishes the energy and water efficiency contractual assessment district (the "Assessment District") to be implemented as provided for by the California PACE Program and related Report and this resolution. The City Council hereby finds and determines that the property within the area of the Assessment District will be benefited by the improvements and activities funded by the assessments.

Section 4. The City Council hereby confirms the contractual assessments to be levied within the parameters of the California PACE Program Report and this resolution.

Section 5. The City Council hereby authorizes and designates the Executive Director of the PHFA to administer the Assessment District in connection with the Program. The Executive Director of PHFA is hereby authorized and directed to file with the City Treasurer and to revise, as appropriate, a list of the parcels for which the PHFA and a property owner have entered into a contractual assessment agreement (each, a "Assessment Financing Agreement") pursuant to the Program as and when such Assessment Financing Agreement(s) are entered.

Section 6. Upon the execution of any Assessment Financing Agreement by all parties thereto pursuant to the Program, the Executive Director of the PHFA, consistent with the Program, the Report, the Act and this resolution is hereby directed to cause to be recorded in the office of the County Recorder of the County of Fresno an assessment lien on the subject property in the form as provided in the California PACE Program Report.

Section 7. The City Manager and City Clerk and designee(s) thereof are each hereby authorized and directed to do all acts and things which may be required of them by this resolution, or which may be necessary or desirable in connection with the Assessment District and carrying out the California PACE Program and all matters incidental thereto, including without limitation, to make clarifying administrative changes to the Report and to modify as deemed necessary by the Executive Director of the PHFA or the City Manager, the Authorized Equipment List, the draft Application and the draft Contract included therein, subject to City Attorney's approval to from.

Section 8. This resolution shall take effect immediately upon its final adoption.

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I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the 13<sup>th</sup> day of January, 2011.

AYES: Baines, Olivier, Quintero, Westerlund, Xiong, Brand  
NOES: None  
ABSENT: Borgeas  
ABSTAIN: None

ATTEST: None

REBECCA E. KLISCH  
City Clerk

By: Rebecca E. Klisch 1-15-11  
Deputy Date

APPROVED AS TO FORM:

JAMES C. SANCHEZ  
City Attorney

By: R 1-04-11  
Robert R. Coyle Date  
Senior Deputy

RRC:elb [54903elb/rrc] reso