

**RESOLUTION NO. 2012-120**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY OF ELK GROVE TO JOIN THE CALIFORNIA  
PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; AUTHORIZING  
THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT  
CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL  
ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF ELK GROVE;  
AND AUTHORIZING RELATED ACTIONS**

**WHEREAS**, the California Enterprise Development Authority ("CEDA") is a joint exercise of powers authority, comprised of cities and counties in the State of California, including the City of Elk Grove (the "City"); and

**WHEREAS**, CEDA has established the California Property Assessed Clean Energy (PACE) program ("California PACE") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et seq.) (the "1915 Act") upon the security of the unpaid contractual assessments; and

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

**WHEREAS**, the City desires to allow the owners of property within its jurisdiction ("Participating Property Owners") to participate in California PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

**WHEREAS**, CEDA will conduct assessment proceedings under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements; and

**WHEREAS**, a proposed form of the Resolution of Intention to be adopted by CEDA in connection with such assessment proceedings (the "ROI") is attached hereto as Exhibit A; and

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

**WHEREAS**, pursuant to Chapter 29, the City authorizes CEDA to conduct assessment proceedings, levy assessments, pursue remedies in the event of delinquencies, and issue bonds or other forms of indebtedness to finance the Improvements in connection with California PACE; and

**WHEREAS**, based upon such authorization as provided in the Participation Agreement, a copy of which is attached hereto as Exhibit B, the City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued in connection with California PACE.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Elk Grove, as follows:

Section 1. On the date hereof, the City Council hereby finds and determines that the issuance of Bonds by the California Enterprise Development Authority (CEDA) in connection with the California Property Assessed Clean Energy (PACE) Program will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

Section 2. In connection with California PACE, the City hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:

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

Section 3. The City Council hereby approves the Participation Agreement between the City and CEDA in the form attached hereto. The City Council hereby authorizes the City Manager to execute the Participation Agreement with such changes as the City Manager deems appropriate in order to commence the California PACE program within the jurisdiction of the City.

Section 4. Pursuant to the requirements of Chapter 29, CEDA has prepared and will update from time to time the "Program Report" for California PACE (the "Program Report"), and CEDA will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

Section 5. The appropriate officials and staff of the City are hereby authorized and directed to make applications for California PACE available to all property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Manager from time to time, are hereby designated as the contact persons for CEDA in connection with California PACE: City Manager, Assistant City Manager, Director of Economic Development, and Director of Public Works.

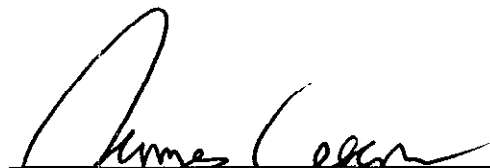
Section 6. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by CEDA in accordance with the Program Report to implement California PACE for Participating Property Owners.

Section 7. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 8. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to FIGtree Energy Resource Company.

Section 9. Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.


**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 27<sup>th</sup> day of June 2012.

  
\_\_\_\_\_  
JAMES COOPER, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JONATHAN P. HOBBS,  
INTERIM CITY ATTORNEY



**EXHIBIT "A"**  
**FORM OF RESOLUTION TO BE USED BY CEDA**

**RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT  
AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION  
OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES,  
ENERGY EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS  
IN THE CITY OF ELK GROVE**

**WHEREAS**, the California Enterprise Development Authority ("CEDA") is a joint powers authority organized and existing pursuant to the 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, 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 and water efficiency improvements that are permanently fixed to real property ("Authorized Improvements"); and

**WHEREAS**, CEDA has obtained authorization from the City of Elk Grove (the "City") located in the County of Sacramento (the "County") to conduct assessment proceedings and to enter into contractual assessments to finance the installation of Authorized Improvements within the jurisdictional boundaries of the City pursuant to Chapter 29; and

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

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

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

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.

- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.
- (d) A public purpose will be served by establishing a contractual assessment program, to be known as California PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

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

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

**Section 4. Identification of Boundaries.** Contractual assessments may be entered into by property owners located within the entire geographic territory of the City.

**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 Resource Company (the "Program Administrator") upon consultation with California 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 is 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 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 CEDA 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 California 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 California 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 Thursday, April 26, at 10:30 AM, for the purposes of allowing interested persons to object to, or inquire about, the proposed California 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 California PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

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

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

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

- a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.
- b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner within the City.
- 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.
- e) 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.

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**[SIGNATURE BLOCK OF CEDA TO BE ADDED HERE]**



**EXHIBIT "B"**  
**Form of Participation Agreement**

**PARTICIPATION AGREEMENT**

**by and between the**

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

**and the**

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**Dated as of \_\_\_\_\_, 2012**

## PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT, made and entered into as of \_\_\_\_\_, 2012, by and between the CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, a joint powers agency organized and existing under the laws of the State of California (the "Agency") and \_\_\_\_\_, a \_\_\_\_\_, organized and existing under the laws of the State of California (the "Participating Member");

### WITNESSETH:

In consideration of the mutual covenants herein contained, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree, as follows:

#### Recitals

- (a) The California Enterprise Development Authority (the "CEDA" or "Agency") is a joint powers agency organized and existing pursuant to the Joint Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California and the Participating Member is either a municipal corporation or other public body and a member of the Agency in good standing.
- (b) The Agency has adopted the Water Efficiency and Property Assessed Clean Energy (PACE) and Job Creation Program (the "Program"), also known as the California PACE Program, for the financing of renewable generation and energy efficient and water savings equipment on improved commercial, industrial and residential property within the Participating Member's jurisdiction.
- (c) The Participating Member has authorized the Agency to form an assessment district (the "District") for the financing of water efficiency and property assessed clean energy (PACE) improvements on certain properties owned by property owners who voluntarily agree to participate in the Program ("Program Participant").
- (d) The Agency intends to issue bonds, notes or other forms of indebtedness (the "Bonds") to finance improvements within the District and in consideration therefor, assessments shall be recorded against each parcel prior to the issuance of the Bonds. Installments of principal and interest sufficient to meet annual debt service on the Bonds, and related administration costs and expenses, are to be included on the regular county tax bills sent to each Program Participant.
- (e) The Participating Member desires to appoint the Agency as its representative to (i) record the assessment against the participating property owner's parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter

29 Part 1 of Division 10 of the California Streets and Highways Code (commencing with Section 8500 et seq.) (the “Law”) and (iii) prepare program guidelines for the operations of the Program.

- (f) The Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. Under the Law, the Participating Member must designate the parties who shall be responsible to proceed with collection and foreclosure of the liens on the properties within the District.
- (g) The Participating Member desires to appoint the Agency as its representative to proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the Marks Roos Act.
- (h) In order to be able to provide AB811 services to the Participating Member at no cost, revenues will be derived under the California PACE program from multiple sources. One such source is the Annual Assessment Cost Recovery (the “Cost Recovery”). The Cost Recovery is the revenue collected annually on the property tax rolls in the amount of five percent (5%) of the annual assessment amount due by the property owner.

**NOW THEREFORE:**

Section 1. Recitals. The Recitals contained herein are true and correct and are hereby incorporated herein by reference.

Section 2. Appointment of Agency. The Participating Member hereby appoints the Agency as its representative to record the assessment against each Program Participant’s parcel and administer the District in accordance with the Law. The Participating Member hereby designates the Agency as the entity which shall proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the Marks Roos Act.

Section 3. Approval of Cost Recovery Calculation. The Participating Member hereby agrees to have Cost Recovery collected on an annual basis and apportioned to the following parties, as follows:

<b>Participating Member</b>	<b>5% Cost Recovery</b>
CEDA	0.75%
Participating Member	2.00%
FIGtree	2.25%

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement by their officers duly authorized as of the day and year first written above.

**CALIFORNIA ENTERPRISE DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
Chairman

\_\_\_\_\_

By: \_\_\_\_\_  
City Manager

**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2012-120**

STATE OF CALIFORNIA       )  
COUNTY OF SACRAMENTO    )  
CITY OF ELK GROVE         )       ss

***I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on June 27, 2012 by the following vote:***

**AYES :       COUNCILMEMBERS:       Cooper, Davis, Detrick, Scherman**

**NOES:       COUNCILMEMBERS:       None**

**ABSTAIN :   COUNCILMEMBERS:       None**

**ABSENT:     COUNCILMEMBERS:       Hume**

  
\_\_\_\_\_  
**Jason Lindgren, City Clerk  
City of Elk Grove, California**