

South Bay Cities Council of Governments

July 23, 2015

TO: SBCCOG Board of Directors

FROM: SBCCOG Steering Committee

RE: MOU Regarding Participation in the Ygrene PACE financing program and Recommendation to cities to participate

BACKGROUND

Property assessed clean energy (PACE) is a means of financing energy efficiency upgrades or renewable energy installations for buildings. Examples of upgrades range from adding more attic insulation to installing rooftop solar panels. One of the most notable characteristics of PACE programs is that the loan is attached to the property rather than an individual residence or business.

The cities of the South Bay are all participants in the HERO program, which is primarily for residential financing. Most of the cities are also participants in Figtree, which is for commercial financing, but they have not been active in Southern California. Through the County of LA, the cities are also members of California First, which provides another alternative.

Each of these programs has different financing rules and different interest rates for the users and therefore, signing on to several programs provides more options for city residents and businesses when they seek financing for improvements to their facilities. PACE programs help home and business owners pay for the upfront costs of green initiatives, such as solar panels, which the property owner then pays back by increasing property taxes by a set rate over time. This allows property owners to begin saving on energy costs while they are paying for their solar panels. This usually means that property owners have net gains even with increased property tax.

YGRENE

The SBCCOG and several of the South Bay cities have been approached by Ygrene, which is now the #1 commercial and multi-family PACE provider in California. It is organized under Mello-Roos legislation and therefore the title to the property is clean and fully tax deductible.

Several of the South Bay cities asked the SBCCOG to review this program as we did for HERO and Figtree before cities adopted them. The Steering Committee discussed the program at both the June and July meetings where Ygrene representatives were present and answered questions. Most of the questions concerned protection for the customer and assurances procedures.

SBCCOG PARTICIPATION

SBCCOG has an existing agreement with Figtree and HERO in which the SBCCOG receives an amount equal to 0.05% of the aggregate cost of issuance for the bonds issued to fund the installation of renewable energy, energy efficiency and water efficiency improvements for which assessment contracts are entered into within South Bay Participant's jurisdictions for the first 5 years of the program. A similar agreement has been offered by Ygrene.

RECOMMENDATION:

The Steering Committee unanimously recommends that the Board enter into the same reimbursement agreement with Ygrene as we have with HERO and Figtree and that these documents be sent to each city and requesting their consideration to enter an agreement with Ygrene.

PACE Programs Comparison Matrix
Sacramento County PACE Program Meeting – December 19, 2014

Policy	County Clean Energy CFD(Ygrene)	CaliforniaFIRST	Figtree PACE Program	HERO	mPOWER
Authorization	SB 555: Mello-Roos CFD. The Mello-Roos Community Facilities Act of 1982 in the Government Code	AB811: Assessment District. Contractual assessment district under the Streets and Highways Code	AB811: Assessment District. Contractual assessment district under the Streets and Highways Code	AB811: Assessment District. Contractual assessment district under the Streets and Highways Code	AB811: Assessment District. Contractual assessment district under the Streets and Highways Code
Government Entity	County of Sacramento. The cities of Citrus Heights, Elk Grove, Galt and Rancho Cordova have opted into the CFD.	California Statewide Communities Development Authority (CSCDA): A joint powers authority sponsored by the California State Association of Counties and the California League of Cities.	California Enterprise Development Authority (CEDA). CEDA, a JPA established by the California Association for Local Economic Development (CALED)	Western Riverside Council of Governments (WRCOG)	-JPA for new members -Current Placer County program in: Roseville, Lincoln, Auburn, Rocklin, Colfax & Loomis -Authorized property owners to participate in Assessment District
Program Administrator	Ygrene Energy Fund	Renewable Funding	Figtree Company, Inc.	<u>Commercial:</u> Samas Capital <u>Residential:</u> Renovate America Inc.	mPOWER Placer (Placer County)
Participating jurisdictions				-Citrus Heights, Rancho Cordova -Total jurisdictions: 185 -Active in 137 jurisdictions; 48 will launch in March 2015.	
Projects / costs				22,537 for \$422m	
Lien	Special tax, only Annual amount as a single line item on property tax bill	Bulk assessment lien for full project amount on title	Bulk assessment lien for full project amount	Bulk assessment lien for full project amount	Bulk assessment lien for full project amount
Interest Rates	Fixed interest rate tied to Libor – currently 4.95 to 9.54%. The average to date is 7.3%.	<u>Commercial:</u> Under \$150K – 6.75%; Over 150K – 6.5% <u>Residential:</u> Fixed Interest rate ranges from 5 yrs: 6.75%, 10 yrs:	<u>Commercial:</u> 4.63% to 6.5% (Based on term of assessment and tied to market rates.)	<u>Commercial:</u> 5.75% to 6.5% <u>Residential:</u> 5.95% to 8.95%. (Based on term of	<u>Commercial:</u> Fixed 6% <u>Residential:</u> Fixed 6%

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		7.59%, 15 yrs: 7.99%, 20 yrs: 8.29%, 25 yrs: 8.39% (Based on Treasuries.)	Residential: 6.5% to 8.5% (Based on term of assessment and tied to market rates.)	assessment.)	
Term	5 to 30 years based on property owner preference and useful life of improvement.	5 to 20 years based on useful life of improvement. Plans to offer new 25 year term (mandatory O&M policy) for solar consistent with recent legislation.	5 to 20 years based on useful life of improvement.	5 to 20 years based on useful life of improvement.	Property owner preference of 5, 10, 15 or 20 years, but no longer than useful life of improvement.
Lender Notification or Consent	<u>Commercial</u> : Lender consent is requested with a 30 day waiting period. <u>Residential</u> : Lender notification required.	<u>Commercial</u> : Lender consent <u>Residential</u> : None (Notification is encouraged but not required.)	<u>Commercial</u> : Lender consent <u>Residential</u> : None (Notification is encouraged but not required.)	<u>Commercial</u> : Lender consent <u>Residential</u> : None	<u>Commercial</u> : Lender consent <u>Residential</u> : None (Notification is encouraged but not required.)
Disclosure	-Notice to Lender of Proposed Special Tax -Acknowledgement of Sole Responsibility to Deal with Lender -Release of Liability language	Disclosures in application – throughout the process.	Applicants receive disclosures stating that their lender, future lenders, or buyers could require the PACE assessment lien to be paid-off prior to the scheduled maturity. Applicants also receive a disclosures stating the APR associated with their specific PACE assessment.	-Language included in application, Assessment Contract, and website. A major training point for contractors. -Disclose that program assessment may need to be paid in full. -By law, property owners must provide notice of the assessment to the buyer prior to sale of the property.	-Residential disclosure included in application, assessment contract, and in person seminar related to FHFA statements and disclosing lender or future lenders or buyers could require lien pay-off. -Truth-in-Lending Disclosure -Good Faith Estimate -Adhere to Housing Financial Discrimination Act
Min. Financing Amount	\$2,500	\$5,000	<u>Commercial</u> : \$5,000 <u>Residential</u> : \$2,500	\$5,000	\$2,500

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Max. Financing Amount	10% of property fair market value.	<u>Commercial</u> : 20% of property value. <u>Residential</u> : 15% of property value.	<u>Commercial</u> : 20% of property value. 10% allowed in most instances. <u>Residential</u> : 15% of property fair market value for properties less than \$700,000, 10% for properties greater than \$700,000.	<u>Commercial</u> : 20% of property value. <u>Residential</u> : 15% of property fair market value for properties less than \$700,000, 10% for properties greater than \$700,000.	<u>Commercial</u> : 10% of property value, unless lender consents for greater amount or no lender. <u>Residential</u> : 10% of property value, unless lender consents for greater amount, not to exceed 15%
Pre-lien loan to value	90% of fair market value.	90% of fair market value.	<u>Commercial</u> : 100% of assessed value. <u>Residential</u> : 90% of fair market value.	90% of fair market value.	<u>Commercial</u> : 90% of assessed value or fair market value whichever is greater, ratio can be lower in some circumstances if lender consents. <u>Residential</u> : 90% of assessed value or fair market value whichever is great value.
Post-lien loan to value	100% of fair market value.	100% of fair market value.	<u>Commercial</u> : 120% of assessed value (subject to lender consent) <u>Residential</u> : 100% of fair market value.	100% of fair market value.	100% of fair market value.
Total aggregate property taxes/ assessments	<u>Residential</u> : Ranges from 5 yrs. - 4.5% to 20 yrs. – 3.1%		Per state law max 5% of market value.	5% of market value, determined at the time of approval of the Assessment Contract.	Per state law Max 5%
Capitalized Interest	Allows up to one year, as needed to cover period to next		Up to 387 days.	Includes an amount equal to the first tax year's contractual	Up to 12 months, as needed to cover period to next bond

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	tax lien filing (June).			assessment installments.	payment.
Prepayment Penalty	3%	None	<u>Commercial:</u> -Years 1-5: 5% -Years 6-10: 3% -Years 11-20: None <u>Residential:</u> None	<u>Commercial:</u> 5% <u>Residential:</u> None	-Year 1: 5% -Year 2: 4% -Years 3-5: 3% -Years 6-20: None
Credit History	Mortgage payments and property taxes current and not late in the past three years.	Mortgage payments and property taxes current in past three years and has no more than one late payment.	Mortgage payments and property taxes current and not late in the past three years.	Mortgage payments and property taxes current and not late in the past twelve months for mortgages and in the last three years for property taxes.	-No property tax default in past three years or since ownership whichever is shorter. -No mortgage notice of default in past five years. -No civil record for five years of failure to make property related debt payments. -No involuntary liens.
Bankruptcy History	Must not have filed for in the past three years.	Must not have filed for in the past two years.	<u>Commercial:</u> Must not have filed for in the past five years. <u>Residential:</u> Must not have filed for in the past seven years.	Must not have filed for in the past seven years; or if bankruptcy is more than two years old and no additional late payments more than 60 days past due in last 24 months.	Must be five years since <u>date of discharge</u> ; evidencing ability to operate without bankruptcy protection.
Participates in PACE Loss Res. Program (CA	No	Yes	Yes – will join as soon as the first residential project is funded	Yes	Yes

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State)					
Legal Validation	Yes ; validation effective October, 2013.	Yes. Legal validation for entire state complete.	Yes ; the program received a statewide judicial validation for both residential and commercial in 2012.	Validation for Sacramento County needed ; On a quarterly basis, WRCOG files an Ex Parte to include those jurisdictions that have adopted Resolutions of Participation.	Yes. Currently amending JPA to facilitate new members. Validation for Sacramento County will be needed if added to the JPA.
Property Owner Fees/Costs	\$50 application fee; \$250 processing and underwriting; \$100 County costs; \$250 recording and disbursement, escrow and title insurance. Closing fee: 3%	<u>Commercial</u> : No application fee. Closing fees vary depending on project size – 3.7%-6%. <u>Residential</u> : No application fee. Closing fees expected to be <6.5%	<u>Commercial</u> : Processing fee: \$695 Closing fee: 4% Administrative fee: \$30 per \$1,000 dollars financed annually. <u>Residential</u> : Annual administrative fee of \$35, closing fee of 5.95%	<u>Commercial</u> : Application fee - \$500 or equal to 1% of project (whichever is lower – but may not exceed actual cost to process application) Document Recording - \$95 Annual Admin Fee - \$430 Admin - 5.825% <u>Residential</u> : Application fee - \$0 Document Recording - \$95; Annual Admin Fee - \$35 Admin – 6.95%	Processing Fee: <ul style="list-style-type: none"> • \$1,300 non-residential charged at closing • \$500 residential charged at closing Title Fee: \$140 Recording Fee: \$66 (est. based on Sac. County Fee 0.25% PACE Loss Reserve Fee Annual Assessment Administration Fee: based on Sacramento County Auditor’s fee
Fees to Contractor	None	None	<u>Commercial</u> : \$695 per year <u>Residential</u> : none	None	None

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Consumer Protection	<ul style="list-style-type: none"> -Permits are required for all work financed -Contractors must meet minimum licensing and insurance requirements -Completing a mandatory training and certification, recertified every year. -Funds are not disbursed to contractors until property owners and contractors have verified work was properly completed. -Ygrene reviews each scope of work to ensure the prices charged to the consumer are consistent with rates being charged by other contractors in the region. -Disclosures: Notice to Lender of Proposed Special Tax, Acknowledgement of Sole Responsibility to Deal with Lender, Release of Liability language -Dispute Resolution 		<ul style="list-style-type: none"> -Permits are required for all work financed -Contractors must meet minimum licensing and insurance requirements in addition to completing a mandatory PACE training session. -Funds are not disbursed to contractors until property owners and contractors have verified work was properly completed. -Figtree reviews each scope of work to ensure the prices charged to the consumer are consistent with rates being charged by other contractors in the region. -Live interaction between Figtree, a customer representative and each property owner prior to funding. 	<ul style="list-style-type: none"> -Registered Contractors -CSLB Confirmation, Insured, Bonded -Contractor Training -Identity Verification -In Good Standing -Product Eligibility Check -Fair Pricing -Permits Required -Terms Confirmation -Paid Upon Job Completion -Dispute Resolution 	<ul style="list-style-type: none"> -Property Owner Seminar – All property owners and contractors are required to attend a seminar prior to processing of application that explains the program, the application process, requirements for approval, and information and resources related to finding and selecting a contractor -Projects are reviewed during application processing. -Final Building permit or project verification must be submitted at or before request for payment. -Disclosure, Notices and Rights to Rescind: Truth-in-Lending Disclosure, Good Faith Estimate, Housing Financial Discrimination Act and Three Day Notice of Right to Rescind.
Additional Information				Additional protections put in place for elderly and non-English speaking customers	<ul style="list-style-type: none"> -Has PPA financing. -Has flexibility to

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					change/customize most components to meet Sacramento County requirements.

**MEMORANDUM OF UNDERSTANDING BETWEEN
YGRENE ENERGY FUND CA, LLC AND
SOUTH BAY CITIES COUNCIL OF GOVERNMENTS
REGARDING PARTICIPATION IN THE
YGRENE WORKS PACE PROGRAM**

This Memorandum of Understanding Regarding Participation in the Ygrene Works for California PACE Program ("MOU") is made and entered into as of this ___ day of _____, 2015 ("Effective Date") by and between the South Bay Council of Governments, a California joint exercise of powers authority ("SBCCOG"), and Ygrene Energy Fund CA, LLC ("Ygrene"). SBCCOG and Ygrene are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

WHEREAS, Ygrene is the program administrator for the Ygrene Works for California property assessed clean energy ("PACE") financing program ("Ygrene Works"); and

WHEREAS, Ygrene Works is sponsored by Golden State Finance Authority ("GSFA"), a California joint exercise of powers authority the members of which include numerous counties and cities within the State of California; and

WHEREAS, Ygrene Works allows the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property; and

WHEREAS, Ygrene Works is being made available to every city and county in California to encourage installation of distributed generation renewable energy sources and energy efficiency and water efficiency improvements for residential and commercial property owners; and

WHEREAS, SBCCOG desires to inform its member agencies about Ygrene Works and serve as a point of contact for the Program in the sub-region, and Ygrene desires to receive SBCCOG's assistance in providing information about Ygrene Works to SBCCOG's member agencies and in serving as a point of ongoing contact for the Program in the future; and

WHEREAS, the purpose of this MOU is to set forth the mutual understandings, terms, and conditions related to partnering with Ygrene.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties hereby agree, as follows:

TERMS

1. Ygrene.

1.1 Ygrene shall pay fees to SBCCOG fees equal to 0.05% of the aggregate principal amount of the projects financed by Ygrene Works to fund the installation of renewable energy, energy efficiency and water efficiency improvements and for which financing contracts are entered into after the Effective Date by owners of properties located within the jurisdiction of SBCCOG's member agencies except for projects financed within the City of Los Angeles and the County of Los Angeles ("Fees").

1.2 Ygrene shall make the payments provided for herein to SBCCOG on a quarterly basis.

2. SBCCOG.

2.1 SBCCOG will, at SBCCOG's first regular meeting held after the Effective Date, begin providing information to and facilitating meetings with its member agencies regarding Ygrene Works, which includes doing each of the following:

(a) SBCCOG will inform each eligible city and county member agency, unless the Parties agree otherwise, about the procedures for participating in Ygrene Works, adopting resolutions authorizing GSFA to offer Ygrene Works, and becoming an Associate Member of GSFA, in substantially the same form as the template resolutions attached hereto as Exhibit "A".

(b) SBCCOG will inform each of its member agencies of the benefits available from participating in Ygrene Works, including but not limited to informing each member that (i) Ygrene Works is an economic development program available at no cost to participating cities and counties; (ii) Ygrene Works finances improvements that decrease energy or water consumption or create clean renewable energy; and (iii) Ygrene Works helps create local jobs, stimulate the local economy, save property owners money, and lower greenhouse gas emissions.

(c) SBCCOG will inform each of its member agencies of the Fees and the resulting increased cost of issuance within SBCCOG's jurisdiction.

2.2 SBCCOG will serve as the main point of contact within SBCCOG's jurisdiction and, as such, will coordinate with its member agencies on behalf of Ygrene and GSFA to facilitate the efficient adoption of Ygrene Works. SBCCOG will cooperate fully with Ygrene and take such additional actions or sign such additional documents as may be necessary, appropriate or convenient to achieve the purposes of this MOU including, but not limited to, assisting with introductions to SBCCOG's member agencies.

- 2.3 SBCCOG will obtain and provide copies of each member agency's Resolutions Authorizing Participation in Ygrene Works.
- 2.4 SBCCOG will arrange for presentations regarding Ygrene Works at committee meetings.
- 2.5 SBCCOG will regularly provide information about Ygrene Works in its newsletters, which will include, but not be limited to, providing a description of and contact information for Ygrene Works, and any additional reference sources that are necessary to provide readers with information for participating in Ygrene Works.
- 2.6 SBCCOG will place a regular reminder of Ygrene Works in its correspondence and provide a conspicuous and recognizable link to the Ygrene Works website on the main page of SBCCOG's website, if any.
3. Term. The term of this agreement shall begin on the Effective Date and terminate on the fifth (5th) anniversary thereafter.
4. Governing Law and Venue. This MOU shall be governed by and construed in accordance with the laws of the State of California. Venue shall be the Superior Court in Sonoma County.
5. Attorneys Fees. If either of the Parties commences an action against the other party arising out of or in connection with this MOU, each party shall be responsible for its individual attorney fees and costs.
6. Amendment. This MOU may be amended in writing by mutual agreement of the Parties.
7. Entire Agreement. This MOU contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.
8. Invalidity; Severability. If any portion of this MOU is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
9. Counterparts. This MOU may be signed in counterparts, each of which shall constitute an original.
10. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this MOU as though fully set forth herein.
11. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
12. Notices. All payments, notices hereunder and communications regarding interpretation of the terms of this MOU or changes thereto shall be provided by the

mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed, as follows:

If to SBCCOG:

South Bay Cities Council of Governments
Attention: Jacki Bacharach, Executive Director
20285 Western Avenue, Suite 100
Torrance, California 90501
Telephone: 310-371-7222
Facsimile: 310-437-8977

If to Ygrene:

Ygrene Energy Fund CA LLC
Attention: Bart Van Voorhis
Executive Vice President
815 5th Street
Santa Rosa, CA 95404
Telephone: 877-819-4736
Facsimile: 707-579-4617

13. Waiver. No waiver of any breach of a provision in this MOU shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

IN WITNESS WHEREOF, the Parties have caused this MOU to be effective as of the day first above written.

YGRENE ENERGY FUND CA LLC

By: _____

Stacey Lawson, President/CEO

Date: _____

SOUTH BAY CITIES COUNCIL OF GOVERNMENTS

By: _____

Chair

Date: _____

Approved as to form:

By: _____
Michael Jenkins, SBCCOG Counsel

DRAFT