

RESOLUTION NUMBER R- 307792

DATE OF FINAL PASSAGE OCT 25 2012

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE RETENTION OF STRADLING YOCCA CARLSON & RAUTH AS SPECIAL COUNSEL TO PREPARE THE NECESSARY MEMORANDA/OPINIONS TO THE CITY COUNCIL ON ALL LEGAL ISSUES AND RISKS FOR THE CITY'S PROPOSED SB 555 PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, TO FORM THE COMMUNITY FACILITIES DISTRICT UNDER SB 555 AND TO FILE/ PROSECUTE A JUDICIAL VALIDATION PROCEEDING AND UNDERTAKE RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, on October 5, 2011, the Governor signed Senate Bill 555 (SB 555), which amended the Mello-Roos Community Facilities Act of 1982 (Act) to enable public agencies to establish community facilities districts that use voluntary special tax programs to promote energy efficiency, renewable energy and water conservation projects that are affixed to real property; the Sacramento PACE Program is voluntary and requires the consent of all the participating property owners; the property owners will repay the costs of the improvements by paying an annual special tax levied against their properties and collected with their property taxes; only commercial and industrial property is currently eligible to participate and residential property will not be included until the Fannie Mae and Freddie Mac issues are resolved; and

WHEREAS, the Natural Resources and Culture Committee (NR&C) reviewed the model Sacramento SB 555 PACE Program (Sacramento PACE Program) at its meeting on October 10, 2012 to determine if the City should adopt a program similar to the Sacramento PACE Program for the City; and

WHEREAS the City Attorney provided a Report to NR&C dated October 8, 2012 entitled "Analysis of Options for a Property Assessed Clean Energy (PACE) Program under SB 555 and Review of the Sacramento SB 555 PACE program" (Report), and our Report recommended that the City retain special outside counsel to prepare the necessary memoranda/opinions to Council on all legal issues and potential risks to the City in connection with adopting a program similar to the Sacramento PACE Program and to provide related special counsel services in connection therewith; and

WHEREAS, at the October 10, 2012 meeting NR&C directed the City Attorney to request authorization on an expedited basis from the City Council to retain outside counsel to provide the following legal services: (i) prepare the necessary memoranda/opinions to Council of all legal issues and risks in connection with adopting the Sacramento PACE Program in San Diego (City's SB 555 PACE Program); and (ii) prepare the legal documents to form a community facilities district under SB 555 and (iii) file/prosecute a judicial validation action; and

WHEREAS, Stradling Yocca Carlson & Rauth (Firm) was selected by the City Attorney's Office as special counsel for the City's SB 555 PACE Program based on their extensive experience in forming communities facilities districts under the Act; and

WHEREAS, subsequent actions by the City Council will be required to form any community facilities district under the Act and to authorize any validation action; and

WHEREAS, the legal costs of the Firm are not expected to exceed \$130,000, assuming the judicial validation is uncontested (if it is contested the legal fees could be substantially in excess of this amount); and

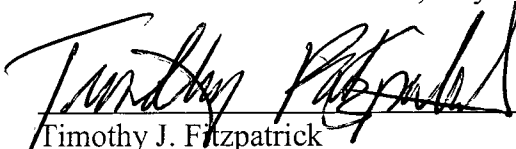
WHEREAS, it is anticipated by the Mayor's Office that Ygrene Energy Fund California LLC or its affiliates (Ygrene), the proposed administrator for the City's SB 555 PACE Program, will compensate the City for all legal costs associated with (i) preparing the necessary memoranda/opinions to Council of all legal issues and risks in connection with adopting the Sacramento model PACE Program in San Diego; and (ii) preparing all necessary legal documents to form a community facilities district under SB 555 and (iii) filing/prosecuting a judicial validation action; the obligation of Ygrene to compensate the City for such legal fees will be by agreement, acceptable to the Mayor and City Attorney and Stradling will not commence legal work pending a final agreement between the City and Ygrene; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the City Attorney is authorized to enter into an agreement for legal services with the Firm to provide legal services in connection with the City's SB 555 PACE Program.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend an amount not to exceed \$130,000 for such legal services, provided that the City Comptroller first issues one or more Comptroller's Certificate certifying that the funds necessary for such expenditures are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Timothy J. Fitzpatrick
Deputy City Attorney

TJF:sc

10/17/12

Or.Dept: City Attorney

Doc. No. 457558

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 23 2012.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10.25.12
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor