

RESOLUTION NO. 17-26

Resolution Of The City Council Of The City Of Emeryville Consenting To The Inclusion Of Properties Within The Territory Of The City In The California Statewide Communities Development Authority (CSCDA) Open Pace Programs of AllianceNRG, PACE Funding, LLC, Renewable Funding, LLC, CleanFund Commercial Pace Capital, and Spruce Finance; Authorizing The California Statewide Communities Development Authority To Accept Applications From Property Owners, Conduct Contractual Assessment Proceedings And Levy Contractual Assessments Within The Territory Of The City; Authorizing Related Actions, And Consenting To The Regional Collaborative Services Agreement Organized By The Bay Area Regional Energy Network

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Emeryville (the "City"); and

WHEREAS, the Authority has established CSCDA Open PACE, which includes several programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the "Programs"), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time; and

WHEREAS, the Authority's program administrators currently active in administering Programs are the AllianceNRG Program (presently consisting of CounterPointe Energy Solutions LLC and Leidos Engineering, LLC), PACE Funding LLC, Renewable Funding LLC, CleanFund Commercial PACE Capital, and Spruce Finance ("Program Administrators"); and

WHEREAS, the Authority agrees to notify the City in advance of any additions or changes to the Program Administrators; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner or owners 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 Authority to conduct assessment proceedings under Chapter 29 within its territory to issue bonds to finance or refinance Improvements, thereby allowing the owners of property within its territory to participate in the Programs ("Participating Property Owners"); and

WHEREAS, the territory within which assessments may be levied for the Programs shall include all of the territory within the City's official boundaries; and

WHEREAS, the Authority will conduct all assessment proceedings under Chapter 29 for the Programs and issue any bonds issued in connection with the Programs; and

WHEREAS, Pursuant to Section 8 of the Amended and Restated Joint Exercise of Powers Agreement Relating to the Authority, 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 any bonds issued in connection with the Programs; and

WHEREAS, pursuant to Government Code Section 6586.5, a notice of public hearing has been published once at least five days prior to the date hereof in a newspaper of general circulation in the City and a public hearing has been duly conducted by this City Council concerning the significant public benefits of the Programs; now, therefore, be it

RESOLVED that the City Council of the City of Emeryville hereby finds, determines and declares as follows:

Section 1. On the date hereof, the City Council held a public hearing and the City Council hereby finds and declares that the issuance of bonds by the Programs will provide significant public benefits, including without limitation, savings in effective interest rate, 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 the Programs, the City hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City and the issuance of bonds to finance or refinance Improvements; provided, that

(1) The participating property owners, who shall be the legal owners of such property, 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

(2) 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 any bonds issued in connection with the Programs.

Section 3. This City Council hereby consents to the Regional Collaborative Services Agreement (RCSA) organized by the Bay Area Regional Energy Network (BayREN) and authorizes residential financing by the Authority as stated in the RCSA guidelines.

Commercial financing by the Authority is authorized provided that existing mortgage lenders give written consent prior to improvements to properties and that the Authority recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the property.

Section 4. The City Manager is hereby authorized and directed to make applications for the Programs available to all property owners who wish to finance or refinance Improvements; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The following staff persons, together with any other staff persons chosen by the City Manager of the City from time to time, are hereby designated as the contact persons for the Authority in connection with the Programs: the Environmental Programs Supervisor.

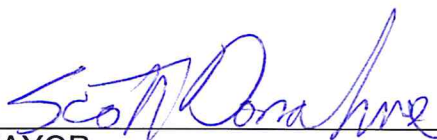
Section 5. The City Manager is hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Programs.

Section 6. Pursuant to Title 14, California Code of Regulations, Section 15378(b)(4), the City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment.

Section 7. 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 the Secretary of the Authority at: Secretary of the Board, California Statewide Communities Development Authority, 1400 K Street, Sacramento, CA 95814.

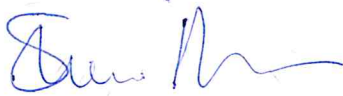
ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, February 21, 2017, by the following vote:

AYES:	<u>5</u>	Mayor Donahue, Vice Mayor Bauters and Council Members Martinez, Medina and Patz
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY



**AGREEMENT FOR COLLABORATIVE SERVICES
FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING**

This Agreement for Collaborative Services ("Agreement"), dated as of , 2016 ("Effective Date") is by and among the Association of Bay Area Governments (hereinafter "ABAG"), **[insert PACE program provider name]**, (hereinafter "PACE Provider"), as an entity administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model and any Participating Entity, as defined in Section 1.3 below, that adopts this Agreement.

RECITALS

WHEREAS, ABAG is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, ABAG as Program Administrator for the Bay Area Regional Energy Network (BayREN), works closely with 101 cities in the nine county Bay Area region (ABAG territory) to develop and implement innovative energy efficiency programs, including supporting commercial and residential Property Assessed Clean Energy (PACE) programs; and

WHEREAS, the BayREN offers programs, technical resources and education for energy upgrades and retrofits; and

WHEREAS, the objective of the BayREN is to help property owners save energy, save money, and live comfortably; and

WHEREAS, the BayREN seeks to assist local governments to understand all aspects of partnering with PACE Providers in order to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, contractor programs, and financing options; and

WHEREAS, the PACE Provider is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the PACE Provider will provide support and resources to any Participating Entity as requested related to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the PACE Provider will support, align and integrate its efforts with the community-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the PACE Provider will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

WHEREAS, the PACE Provider will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the Participating Entity's County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the PACE Provider, ABAG and the Participating Entity adopting this Agreement, nor does it preclude any separate contracts, contract terms for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings between ABAG and the PACE Provider and to establish basic operating procedures for any PACE provider operating within the ABAG territory, and any Participating Entity that adopts this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1 Definitions.

- 1.1 **"Eligible improvement"** is a technology, product or tool officially approved by the PACE provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure improvements that will be permanently affixed to real property, and any additional improvements deemed eligible in the future by the California Legislature and/or the California Judiciary.
- 1.2 **"PACE Provider"** is an entity participating in ABAG territory administering a program providing Property Assessed Clean Energy (PACE) financing.

- 1.3 **“Participating Entity”** is any city, town, county or the City and County of San Francisco located within ABAG’s geographical boundaries that adopt this Agreement.
- 1.4 **“Participating Contractor”** is any contractor that has agreed to, and abides, by the terms and conditions of the PACE Provider’s contractor standards.
- 1.5 **“Property Assessed Clean Energy (PACE) Financing”** is a means of financing distributed generation, renewable energy sources, energy and water efficiency improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments and/or special taxes, utilizing either California Assembly Bill 811 (Levine, 2008) (“AB 811”), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) (“SB 555”), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.
- 1.6 **“Work”** as defined throughout this Agreement is the collaborative, non-competitive, effort between the PACE Provider and ABAG to support the citizens of ABAG member jurisdictions in completing water, energy efficiency upgrades, and the installation of renewable energy generating improvements.

2 Scope of Work / Collaboration.

- 2.1 PACE Provider's Specified Services. The PACE Provider will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555.
- 2.2 Performance Standard. PACE Provider shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. ABAG has relied upon the professional ability and expertise of PACE Provider as a material inducement to enter into this Agreement. PACE Provider hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws. If ABAG is concerned that any of PACE Provider's work is not in accordance with the level of competency and standard of care described herein, ABAG shall have the right to do any or all of the following: (a) require PACE Provider to

discuss with Participating Entity and/or to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies available to ABAG at law or in equity.

Financing Provision Requirements.

The PACE Provider will:

- 2.3.1 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.
- 2.3.2 Provide summary of financing details (including assessment or special tax amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing.
- 2.3.3 For residential properties, require an applicant's acknowledgment of the Federal Housing Finance Agency position on PACE by a separate signature/initial acknowledgment, in a Residential Disclosure Signature Form that is substantially similar in content to Attachment 1(a) or 1(b), as approved by ABAG.
- 2.3.4 Provide training to contractors and information to property owners on the availability of rebates (for all utility and generation types), including and not limited to city and county rebate programs, BayREN programs, PG&E programs, and other such offerings. (For information about local programs, the contractor and/or home owner may be directed to the BayREN Home Upgrade Advisor at 866-878-6008.)
- 2.3.5 Require that applicable building permits are obtained for all improvements in Participating Entities.
- 2.3.6 Verify that all property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever is shorter.
- 2.3.7 Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project and not recommend that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments.
- 2.3.8 Not represent that the full assessment is tax deductible.
- 2.3.9 Have a consistent plan for removal of assessments at end of repayment term, prepayment and/or in the event of program closure.

2.4 Financial Policies.

The PACE Provider will:

- 2.4.1 For programs offering residential PACE financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.
- 2.4.2 Notify ABAG six months in advance if funding capacity available from the PACE Provider to prospective PACE customers in the Participating Entity will fall below the amount dispersed in the previous six months of operation.
- 2.4.3 Notify ABAG of any foreclosure action as a result of a default in the payment of a PACE assessment on property within ABAG's geographical boundaries, where the PACE assessment was originated by the PACE Provider.

2.5 Documents, Data, and Information Policies.

The PACE Provider will:

- 2.5.1 Provide to Participating Entity (for internal evaluation purposes only and not for distribution to any third party or for marketing purposes, other than as required by law, by request of Participating Entity, electronic access to the name, business name, and California State Contractors license number of participating contractors of the PACE Provider's program whose business address is located in the requesting Participating Entity or who conduct business in the requesting Participating Entity.
- 2.5.2 Retain completed Residential Disclosure (hardcopy or electronic) on file for duration of assessment, and furnish to Participating Entity upon request.
- 2.5.3 Provide upon request either direct real time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) to Participating Entity by request for internal evaluation purposes only (and not for distribution to any third party, including, without limitation, utility companies, services providers and equipment manufacturers or for marketing purposes) that includes the following information for each assessment:
 - a. *Required data:*
 - i. Assessor's Parcel Number (APN) of the property

- ii. Dollar amount financed (the amount of the assessment and/or special tax)
- iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed as captured by Participating Contractor
- iv. Listing of all renewable generation improvements installed and the solar STC-DC rating in watts or kilowatts as captured by Participating Contractor
- v. Estimated energy and water savings (in appropriate units) associated with the project

b. If available (in the aggregate):

- i. Amount of rebate or incentive dollars associated with the project (not financed) and the name of the program
- ii. How the customer heard about PACE financing
- iii. Why the customer selected PACE over other financing instruments available
- iv. Why the customer selected their final PACE Provider over the other members

The Participating Entity will:

Maintain the privacy and security of data received from PACE Provider. Participating Entity shall comply with all applicable state and federal laws, regulations and applicable California Public Utilities Commission regulations. Participating Entity may only provide reports relating to Section 2.5.3(a)(ii)-(v) for public distribution that aggregate the data such that individual customer information cannot be identified, unless such customer has authorized written release of individual customer information. A Participating Entity shall not share with any third party the data and reports provided by a PACE Provider pursuant to Section 2.5.3(b) (if any).

2.5.4 Provide the documents required for participation in the PACE Providers' PACE Financing program to Participating Entity officials.

2.5.5 Provide support to Participating Entity's staff to facilitate adoption of required participation documents.

2.6 ABAG will encourage Participating Entity to offer staff resources and support to bring forward to their respective boards or councils the documents

provided by the PACE Provider required for participation in the PACE Provider's PACE financing product.

2.7 Branding / Marketing Requirements.

The Parties will:

- 2.7.1 Collaborate on any local and/or regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners.
- 2.7.2 Represent the role of ABAG as the local neutral third party, not-for-profit, public service agency supporting the public through the upgrade process, with the following message to consumers: Among the financing products available, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects.

The PACE Provider will:

- 2.7.3 Provide assistance to ABAG and any Participating Entity signing this Agreement for: (1) coordinating and implementing the integration of the PACE Provider into applicable BayREN and other relevant energy efficiency programs; and (2) support of contractor training.
- 2.7.4 Provide specific training for participating contractors engaged with local PACE programs using the PACE Provider's financing product, materials, collateral, tools, and associated software, through training offered directly from the PACE Provider.
- 2.7.5 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the PACE Provider's financing option into the websites of any Participating Entity requesting such assistance.
- 2.7.6 Provide training and resources to any Participating Entity as needed to build understanding and support for use of the PACE financing product

ABAG will encourage ABAG members to:

- 2.7.7 Present with impartiality the financing products of the PACE Providers in all venues to the public.
- 2.7.8 Present marketing collateral of all financing products (where applicable) with impartiality in education and outreach materials and events

2.8 PACE Providers Responsibilities Regarding Participating Contractor.

PACE Providers will:

- 2.8.1 Require that contractors have the appropriate California State License Board (CSLB) license in good standing
- 2.8.2 Require, in accordance with California State License Board requirements, that contractors' bonding is in good standing
- 2.8.3 Require, in accordance with California State License Board requirements, that contractors have appropriate Workers' Compensation coverage
- 2.8.4 Require that contractors have a minimum of \$1M of commercial general liability insurance
- 2.8.5 NOT endorse, recommend, or refer any specific contractor other than contractors who are to PACE Provider's knowledge, in good standing with CSLB, are insured and meet material program eligibility requirements
- 2.8.6 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor
- 2.8.7 NOT make any warranty regarding the contractor's work or products purchased from contractors provided
- 2.8.8 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products
- 2.8.9 Comply with provisions of Section 2.3.7 of this Agreement.
- 2.8.10 Via trainings and customer complaint system, require that contractors and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of ABAG or any Participating Entity, or claim association or affiliation with ABAG or any Participating Entity.
- 2.8.11 Independently engages the Participating Entity's Tax Collector for administration of property tax assessments placed through its financing product.

3 Payment. This Agreement does not include any financial arrangements between the PACE Provider and ABAG, nor does it preclude any separate contracts for services or support.

4 Term of Agreement. The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

5 Termination.

- 5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, ABAG, PACE Provider, or any Participating Entity shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party to this Agreement; provided that a party's termination of this Agreement under this section shall not automatically terminate any other agreement or contract between the other parties.
- 5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the PACE Provider fail to uphold any of its obligations under this Agreement in a material way, within the time and in the manner herein provided, or otherwise materially violate any of the terms of this Agreement, ABAG or a Participating Entity may, after providing the PACE Provider with a thirty (30) day cure period, immediately terminate this Agreement by giving PACE Provider written notice of such termination, stating the reason for termination; provided that the termination of this Agreement shall not automatically terminate any other agreement or contract between or among the parties.
- 5.3 Delivery of Data and Information upon Termination. In the event of termination, PACE Provider, within 14 days following the date of termination, shall deliver to the extent legally permitted to Participating Entity all raw data and information in an editable electronic format as outlined in and subject to the terms of Section 2.5, Document, Data, and Information Policies.
- 5.4 Authority to Terminate. The Executive Director of ABAG has the authority to terminate this Agreement on behalf of ABAG
- 5.5 Effect of Termination. Termination of this Agreement by ABAG or Participating Entity shall not affect the ability to levy and collect assessments and the PACE Provider's ability to issue bonds for assessment contracts located within the jurisdiction of such entity which have been entered into prior to the date of termination.
- In the event of termination pursuant to this Section 5 by ABAG, ABAG may notify all Participating Entities of said termination.

6 Hold Harmless, Indemnity and Waiver of Subrogation.

To the fullest extent allowed by law, PACE Provider shall defend, indemnify, save harmless and waive subrogation against the ABAG, and its members, elected and appointed officials, officers and employees (Indemnitees) against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from

all acts or omissions to act of PACE Provider or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses resulting from an intentional act or the gross negligence of an Indemnitee.

This section shall in no event be construed to require indemnification by PACE Provider to a greater extent than permitted under the public policy or laws of the State of California. These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in this Agreement. These defense and indemnification obligations shall survive the termination or expiration of the contract for the full period of time permitted by law.

7 **Insurance Requirements.** PACE provider shall obtain and maintain insurance as required in Attachment 2.

8 **Prosecution of Work.** The execution of this Agreement shall constitute PACE Provider's authority to proceed immediately with the performance of this Agreement.

9 **Representations of PACE Provider.**

9.1 **Standard of Care.** ABAG and Participating Entity have relied upon the professional ability and training of PACE Provider as a material inducement to entering into this Agreement. PACE Provider hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws.

9.2 **Status of PACE Provider.** The parties intend that PACE Provider, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. PACE Provider is not to be considered an agent or employee of ABAG or of any Participating Entity and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits that ABAG or the Participating Entity provides its employees.

9.3 **Conflict of Interest.** PACE Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in

any manner or degree with the performance of its services hereunder. PACE Provider further covenants that in the performance of this Agreement no person having any such interests shall be employed.

9.4 Statutory Compliance. PACE Provider agrees to comply with all federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.5 Nondiscrimination. Without limiting any other provision hereunder, PACE Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.6 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of PACE Provider.

10 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits the parties' right to terminate this Agreement pursuant to Section 5, Termination.

11 Assignment and Delegation. No party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented; provided however, that

PACE Provider may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets or equity ownership without the prior written consent of any other party provided that the successor expressly assumes all of the obligations, including this Agreement, and confirms all of the representations, warranties and covenants of PACE Provider hereunder.

12 Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service to:

TO: ABAG:	Address _____ Email address: _____
TO: PACE PROVIDER:	_____ _____ _____ Email address: _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13 Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by a party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and

agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. PACE Provider and ABAG acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Each party hereto acknowledges that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

- 13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Alameda.
- 13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Counterparts. This Agreement may be executed in two or more counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument. The delivery by facsimile or electronic mail of an executed copy of this Amendment shall be deemed valid as if an original signature was delivered

Continued on next page:

IN WITNESS WHEREOF, the ABAG and the PACE Provider hereto have executed this Agreement as of the Effective Date.

PACE PROVIDER: _____

ABAG: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM FOR ABAG

Date: _____

By: _____

Kenneth Moy, ABAG Counsel

ATTACHMENT 1(a)

ALERT: Fannie Mae/Freddie Mac Instructions for Lenders

SINGLE FAMILY HOME OWNERS: In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs such as _____. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family home lenders, instruct lenders to treat energy assessments as “loans” instead of “assessments.”

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac “will not purchase mortgage loans secured by properties with an outstanding PACE obligation.”

These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer’s lender may refuse to finance the buyer’s first mortgage loan unless the assessment is paid off. We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

I/We have read the above statement. All property owners on title must initial below:

_____ <i>Initials</i>	_____ <i>Date</i>	_____ <i>Initials</i>	_____ <i>Date</i>
_____ <i>Initials</i>	_____ <i>Date</i>	_____ <i>Initials</i>	_____ <i>Date</i>

Continued on next page:

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

- <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf>
- <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf>
- <http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx>
- <http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx>
- <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf>
- <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1020.pdf>

ATTACHMENT 1(b)

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, FANNIE MAE AND FREDDIE MAC, THE OWNER OF A SIGNIFICANT PORTION OF ALL HOME MORTGAGES, STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY THE AUTHORITY. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

I/We have read the above statement. All property owners on title must initial below:

_____	_____	_____	_____
<i>Initials</i>	<i>Date</i>	<i>Initials</i>	<i>Date</i>
_____	_____	_____	_____
<i>Initials</i>	<i>Date</i>	<i>Initials</i>	<i>Date</i>

ATTACHMENT 2

Insurance Requirements. PACE Provider shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a period of five (5) years following the completion of this project. PACE Provider shall provide a copy of section 21 of this contract and these insurance requirements to its insurance broker or insurer to confirm compliance. In the event PACE Provider fails to obtain or maintain completed operations coverage as required by this agreement, ABAG, at its sole discretion, may purchase the coverage required and the cost will be paid by PACE Provider. The limits of insurance required in hereunder may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Indemnitees (if agreed to in a written contract or agreement) before the any Indemnitee's own Insurance or self-insurance shall be called upon to protect it as a named insured.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage
(occurrence Form CG 0001).

Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1
(any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Errors and Omissions Liability insurance appropriate to the PACE Provider's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(b) Minimum Limits of Insurance. PACE Provider shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Errors and Omissions Liability: \$1,000,000 per claim/aggregate.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. The insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the Indemnitees; or the PACE Provider shall satisfy any such deductibles or self-insured retentions. In addition, policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or any of the Indemnitees.

(d) Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Indemnitees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of PACE Provider; completed operations; or automobiles owned, leased, hired or borrowed by PACE Provider.

(ii) For any claims related to this project, the PACE Provider's insurance coverage shall be primary insurance as respects the Indemnitees.

(iii) Any insurance or self-insurance maintained by the Indemnitees shall be excess of PACE Provider's insurance and shall not contribute with it.

(iv) Except for General Liability and Automobile Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty(30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG. For General Liability and Automobile Liability, PACE Provider shall provide ABAG with thirty (30) day's prior notice of cancellation by either the insurer or PACE Provider.

(v) Coverage shall not extend to any defense or indemnity coverage for the active negligence of the Indemnitees in any case where an agreement to defend and indemnify the Indemnitees would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Other Insurance Provisions – Workers Compensation. The Workers Compensation insurance shall be endorsed to waive subrogation against the Indemnitees.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ABAG.

(g) Verification of Coverage. PACE Provider shall furnish the ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified

copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

TO: Participating Entity:

IN WITNES WHEREOF, the Participating Entity has executed this Agreement as of the Effective Date.

City of Emeryville:

By: Carolyn Lehr
City Manager

Method and Place of Giving Notice. All notices to Participating Entity shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows and as set forth in the signature page for the Participating Entity:

Name: Carolyn Lehr

Address: City of Emeryville

1333 Park Avenue, Emeryville CA 94608

Phone Number: (510) 596-4371

E-mail: clehr@emeryville.org