



# CITY OF HAYWARD

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Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)

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**File #:** CONS 17-634

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**DATE:** October 17, 2017

**TO:** Mayor and City Council

**FROM:** Director of Utilities & Environmental Services

**SUBJECT**

Consideration of CMFA Open PACE

**RECOMMENDATION**

That the City Council adopts resolutions authorizing the City Manager to 1) execute an agreement to join CMFA Open PACE, and 2) sign ABAG member addendums to the PACE Regional Collaborative Services Agreement.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Draft Resolution to Join CMFA Open PACE
Attachment III	CMFA JPA Agreement
Attachment IV	Draft Resolution to Execute Addendums to ABAG RCSA
Attachment V	Sample Addendum to RCSA



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## RECOMMENDATION

That Council adopts resolutions authorizing the City Manager to 1) execute an agreement to join CMFA Open PACE, and 2) sign ABAG member addendums to the PACE Regional Collaborative Services Agreement.

## SUMMARY

Property Assessed Clean Energy (PACE) programs allow property owners to finance energy and water efficiency improvements and pay off the debt through annual installments on their property tax bill. The City Council has previously authorized eight PACE programs to operate in Hayward ([www.hayward-ca.gov/PACE](http://www.hayward-ca.gov/PACE)). There have been over 300 PACE projects completed in Hayward thus far.

This report presents an additional PACE program for Council's consideration. California Municipal Finance Authority (CMFA) Open PACE sponsors one residential PACE program and three commercial PACE programs. After reviewing the terms of each program, staff is recommending that Council authorize CMFA Open PACE to operate in Hayward.

In addition, this report presents the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA), which ABAG created to improve transparency and reporting standards for residential PACE Programs. Staff is recommending that Council authorize the City Manager to sign member addendums to the RCSA with each of the residential PACE programs operating in Hayward.

## BACKGROUND

Property Assessed Clean Energy (PACE) programs allow property owners to finance energy and water efficiency improvements and pay off the debt through annual installments on their property tax bill. The intent is to provide an additional means of financing to make environmentally sustainable property improvements and seismic upgrades more accessible to property owners. The potential benefits of PACE financing over other financing options include 100% financing for eligible improvements, a longer repayment period of up to twenty

years, and the potential reliability of pre-approved contractors. Traditional home improvement loans or second mortgages require some down payment and do not certify specific contractors; however, they may have lower interest rates than PACE financing.

The City Council has previously authorized eight PACE programs to operate in Hayward. Five of the programs serve both commercial and residential customers, two serve exclusively commercial, and one serves exclusively residential. Links to each of the programs and past staff reports are available on the [City's PACE website](#).

Up to this point, Council has taken the approach of creating an open PACE market in Hayward to maximize the amount of financing and offerings available to Hayward property owners. In other words, Council has approved all PACE programs that request to operate in Hayward once staff has reviewed them to ensure there are no program-specific concerns. Many other Bay Area jurisdictions have taken the same approach, including Fremont, Oakland, San Leandro, and Berkeley.

### PACE in the News

There have been anecdotal cases reported by local news outlets of PACE contractors misrepresenting financing terms to customers. In these cases, the related PACE program has removed the contractor from its list of certified contractors and has refused to finance the proposed work. In some cases, the PACE program has assisted the homeowners with claims against the contractor. Staff has no knowledge of reports with verifiable data of systematic contractor misrepresentations or a growth in customer dissatisfaction with PACE. However, staff is aware that these scenarios are possible and is monitoring the news.

The Kern County Board of Supervisors recently voted to disband their PACE programs after groups of realtors voiced their concerns. The heated testimony at their meetings included many voices on both sides. Each side offered anecdotal evidence of PACE benefits and potential downsides of PACE financing, but no data showing trends. There are approximately 2,500 properties with PACE assessments in Kern County.

The California State Assembly is currently considering [SB-242](#) (Skinner), which has passed in both the Senate and Assembly and is pending amendments. This bill expands on the consumer protection rules that were passed by the State in 2016, including requiring PACE program administrators to record an oral confirmation that the property owner has reviewed key terms of the contract.

In addition, the California State Senate is currently considering [AB-271](#) (Galgiani), which passed in the Assembly on May 30, 2017. This bill would authorize the county tax collector to direct the county auditor to remove delinquent PACE installments from the tax roll so they do not accrue penalties. Delinquent property taxes can accrue higher penalties than other types of delinquent payments and come with greater risks. Proponents of this bill claim that it removes the incentives for PACE lenders to profit from the penalty provision of the property tax collection system.

The US Senate is currently considering a Republican-sponsored bill titled the [Protecting Americans from Credit Exploitation \(PACE\) Act](#). This bill is being backed by the Mortgage Bankers Association and the California Association of Realtors. The bill would require PACE issuers to follow the same regulations and disclosures as banks and mortgage lenders. The PACE industry is opposing this bill, claiming it would be overly burdensome and harm the industry. The bill is being opposed by Natural Resources Defense Council and the Rocky Mountain Institute.

### Council Sustainability Committee (CSC) Action

The Council Sustainability Committee reviewed these items at its [July 10, 2017 meeting](#) and recommended that Council approve the staff recommendations. In addition, Committee members commented that Hayward now has a robust PACE marketplace and they feel that Hayward is reaching a limit for additional PACE programs.

## DISCUSSION

### Consideration of CMFA Open PACE

One of the purposes of this report is to present an additional Open PACE program to Council for consideration. Over the past several months, California Municipal Finance Authority (CMFA) Open PACE has contacted City staff and elected officials to state their interest in operating in Hayward. CMFA Open PACE is currently operating in over eighty California jurisdictions, mostly in Southern California. In the Bay Area, Berkeley and Fremont have joined and San Francisco is currently considering joining.

CMFA Open PACE is the same model as California Statewide Communities Development Authority (CSCDA) Open PACE, which the City has already joined. Both are Joint Powers Authorities (JPAs) that select specific PACE providers to administer their PACE financing programs. The model is considered “open” because once a municipality has joined the JPA, they can be served by any PACE programs that the JPA reviews and decides to sponsor.

If Council joins CMFA Open PACE, then any future PACE programs sponsored by CMFA will also be authorized to operate in Hayward. However, if Hayward decides it does not want a specific CMFA-sponsored program to operate in Hayward, then the City can choose to opt out of that individual program at any point in the future.

CMFA Open PACE currently sponsors these four PACE Programs:

- BluePACE - commercial only
- Structured Finance - commercial only
- OnPACE Energy Solutions - commercial only
- Energy Efficient Equity (E3) - residential only

Staff has reviewed the three commercial-only programs, BluePACE, Structured Finance, and OnPACE Energy Solutions, and found that they each have very similar terms, interest rates, and consumer protection measures as existing PACE commercial programs in Hayward.

Staff spent additional time vetting Energy Efficiency Equity (E3) because it is a residential program and staff is sensitive to the fact that residential customers may be less knowledgeable than commercial customers when it comes to financing programs. Of the over 300 PACE projects in Hayward so far, approximately 95% have been residential. Staff does not have program-specific concerns about E3's program, which is similar to the other residential PACE programs in Hayward. A few areas where E3 stands out:

- E3 offers slightly lower interest rates than other PACE programs in certain instances. For example, they have a 4.99% rate for a five-year repayment term for customers with a good credit profile.
- E3 has all their contractors sign a repurchase agreement to protect homeowners from contractor fraud and program misrepresentation.
- E3 uses BBB ratings and Yelp reviews as part of their contractor screening.
- E3 requires homeowners to have the household income necessary to pay back the assessment, in addition to the industry standard equity requirements (many PACE programs do not have an income requirement).
- Like other PACE programs, E3 allows property owners to borrow up to 96.5% of the equity in their home.

### Mitigating Risks Related to an Open PACE Market

As with most financing mechanisms, PACE programs can present risks to consumers. In particular, PACE increases the debts of property owners and may lead to foreclosure in the case of default. In addition, because marketing for PACE is usually led by a contractor, there is potential for contractor misrepresentation. Because the industry is fairly new, the laws regulating the industry continue to evolve. States and the Federal government are still debating which types of regulations will best protect consumers without unnecessarily hindering the growth of the PACE industry.

The State of California requires PACE programs to complete a degree of contractor screening and training. In addition, the State passed [AB 2693](#) in September 2016, which requires specific disclosure guidelines consistent with the federal Consumer Financial Protection Bureau's [Know Before You Owe](#) disclosures. In a parallel effort, the Obama administration and HUD (FHA) announced in July 2016 that the FHA would back mortgages with PACE liens for its programs for veterans and low-income property owners. HUD released [consumer protection requirements](#) that PACE assessments must meet for the property to qualify for FHA insurance (it is not yet clear if this will change under the Trump administration).

Staff has not received any concerns or complaints from Hayward community members since the launch of PACE. The State of California monitors most PACE programs, including E3, through its California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA). The Authority administers the State's Loss Reserve program, which makes first mortgage lenders whole for losses if a PACE lien is in foreclosure. To date, CAEATFA has not received any claims on the loss reserve. CAEATFA collects statewide information on PACE participation, which can be found at: <http://www.treasurer.ca.gov/caeatfa/pace/activity.asp>

### ABAG Regional Collaborative Services Agreement

The Association of Bay Area Governments (ABAG) has created a Regional Collaborative Services Agreement (RCSA) for residential PACE programs to improve transparency and reporting standards.

- Designates ABAG as the liaison regarding implementation of the Agreement, meaning that ABAG will follow up with PACE providers when concerns are raised about customer protections or reporting
- Requires all residential PACE programs to have clearly visible disclosures regarding the Federal Housing Finance Authority's (FHFA) policies on residential PACE programs
- Requires all residential PACE programs to participate in the State's PACE Loss Reserve
- Requires data sharing between the PACE programs and local governments to monitor program performance locally and improve reporting
- Clarifies that RPP's are responsible for negligence in administering PACE programs

Most of the residential PACE programs operating in the Bay Area, including E3, have executed the RCSA with ABAG. As a next step, cities can sign individual member addendums to the ABAG RCSA with each residential PACE program. The purpose of these addendums is to ensure the PACE providers are aware that the City will hold the providers accountable to the terms of the RCSA. Staff is recommending that Council passes the attached resolution authorizing the City Manager to execute the member addendum agreements to the ABAG Regional Collaborative Services Agreement.

### STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities strategy is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goal and objective:

Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods

Objective 4: Create resilient and sustainable neighborhoods.

This agenda item also supports the Tennyson Corridor Strategic Initiative. The purpose of the Tennyson Corridor Strategy is to develop an attractive, cohesive, thriving Tennyson Corridor through thoughtful engagement of residents, businesses, and community partnerships. This item supports the following goal and objective:

Goal 5: Increase Community Resiliency.

Objective 6: Reduce resident utility bills through efficiency

## FISCAL AND ECONOMIC IMPACTS

Participation in PACE programs does not impact the General Fund or any City funds. PACE programs use private sector capital to provide property owners with funding.

The primary economic benefit of allowing an open PACE market in Hayward is that it increases the total amount of financing available to Hayward property owners for improvements. This also increases the total debts carried by property owners who choose to take part, which creates potential economic risks, especially given higher interest rates associated with PACE programs compared with conventional home equity loans. In the worst case, cost savings may not materialize as predicted and the owners could end up owing more than they can afford, which could result in increased foreclosures. However, this has not been the experience of PACE programs up to this point. On the contrary, most PACE programs claim that the default rates of their property owners are lower than nationwide averages, which is reflected by the fact that there have been zero claims on the State's loss reserve to date.

## SUSTAINABILITY FEATURES

Energy: Access to PACE funding enables solar photovoltaic installations and energy efficiency upgrades – both of which reduce the community's reliance on fossil fuels.

Air: Access to PACE funding enables energy efficiency upgrades, which may reduce the use of wood-burning stoves/fireplaces and related emissions.

Water: Access to PACE funding enables water upgrades, which reduce Hayward's per capita water consumption.

Seismic: Access to PACE funding enables seismic upgrades, which will increase structures' resiliency after an earthquake.

## NEXT STEPS

1. If Council adopts the attached resolution authorizing the City Manager to join CMFA Open PACE, staff will execute the necessary agreements.
2. If the Council adopts the attached resolution authorizing the City Manager to sign ABAG addendums to the RCSA, then staff will then follow up with each of the City's residential PACE programs to execute addendums.

Prepared by: Mary Thomas, Management Analyst

Recommended by: Alex Ameri, Director of Utilities & Environmental Services

Approved by:



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Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING, AUTHORIZING, AND DIRECTING EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY; CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TERRITORY OF THE CITY IN THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY OPEN PACE PROGRAMS; AUTHORIZING THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE CORPORATE BOUNDARIES OF THE CITY; AND AUTHORIZING RELATED ACTIONS.

WHEREAS, the California Municipal Finance Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California (the "Members"), formed pursuant to a Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the "Agreement") for the purpose of promoting economic, cultural and community development and in order to exercise any powers common to its Members, including the issuance of bonds, notes or other evidences of indebtedness; and

WHEREAS, City of Hayward (the "City"), has determined that it is in the public interest and for the public benefit that the City become a Member of the Authority in order to facilitate the promotion of economic, cultural and community development activities in the City, including the financing of projects therefor by the Authority; and

WHEREAS, there is now before this City Council the form of the Agreement; and

WHEREAS, the Agreement has been filed with the City, and the members of the City Council, with the assistance of its staff, have reviewed said document; and

WHEREAS, the Authority is implementing Property Assessed Clean Energy (PACE) programs, which it has designated CMFA Open PACE, consisting of CMFA Open PACE 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 program administrators currently active in administering Programs are Energy Efficient Equity, Inc.; BlueFlame PACE Services LLC; OnPACE Energy Solutions, LLC; and Structured Finance Associates, LLC; and the Authority will notify the City in advance of any additions or changes; 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 owners of property (“Participating Property Owners”) within its territory to participate in the Programs and to allow the Authority to conduct assessment proceedings under Chapter 29 within its corporate boundaries and to issue bonds to finance or refinance Improvements; 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, 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, administration repayment or guarantee of any bonds issued in connection with the Programs;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

Section 1. This City Council hereby finds and declares that the foregoing recitals are true and correct.

Section 2. The Agreement is hereby approved and the City Manager is hereby authorized and directed to execute said document, and the City Clerk or such clerk’s designee is hereby authorized and directed to attest thereto.

Section 3. The properties in the City will benefit from the availability of the Programs within the corporate boundaries of the City and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

Section 4. 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, administration, repayment or guarantee of any bonds issued in connection with the Programs.

Section 5. The appropriate officials and staff of the City are 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 City Manager and the Director of Utilities & Environmental Services are hereby designated as the contact persons for the Authority in connection with the Programs.

Section 6. 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 7. 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, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 8. This Resolution shall take effect immediately upon its adoption and remain in effect until terminated by the City. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Financial Advisor of the Authority at: California Municipal Finance Authority, 2111 Palomar Airport Road, Suite 320, Carlsbad, California, 92011, Attn: Travis Cooper.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

Exhibit A:    JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE  
                  CALIFORNIA MUNICIPAL FINANCE AUTHORITY

**JOINT EXERCISE OF POWERS AGREEMENT  
RELATING TO THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY**

THIS AGREEMENT, dated as of January 1, 2004, among the parties executing this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to as the “Members” and those parties initially executing this Agreement are referred to as the “Initial Members”):

**WITNESSETH**

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the “Joint Exercise of Powers Act”), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Members is a “public agency” as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, each of the Members is empowered by law to promote economic, cultural and community development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, the increase of the tax base, and the promotion of opportunities for education, cultural improvement and public health, safety and general welfare; and

WHEREAS, each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means, including through making grants, loans or providing other financial assistance to governmental and nonprofit organizations; and

WHEREAS, each Member is also empowered by law to acquire and dispose of real property for a public purpose; and

WHEREAS, the Joint Exercise of Powers Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, as specified in this Agreement and to exercise the additional powers granted to it in the Joint Exercise of Powers Act and any other applicable provisions of the laws of the State of California; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue or execute bonds, notes, commercial paper or any other evidences of indebtedness, including leases or installment sale agreements or certificates of participation therein (herein “Bonds”), and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California to accomplish its public purposes; and

WHEREAS, the Members have determined to specifically authorize a public entity authorized pursuant to the Joint Exercise of Powers Act to issue Bonds pursuant to the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California; and

WHEREAS, it is the desire of the Members to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake the financing and/or refinancing of projects of any nature, including, but not limited to, capital or working capital projects, insurance, liability or retirement programs or facilitating Members use of existing or new financial instruments and mechanisms; and

WHEREAS, it is further the intention of the Members that the projects undertaken will result in significant public benefits to the inhabitants of the jurisdictions of the Members; and

WHEREAS, by this Agreement, each Member desires to create and establish the “California Municipal Finance Authority” for the purposes set forth herein and to exercise the powers provided herein;

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

**Section 1. Purpose.**

This Agreement is made pursuant to the provisions of the Joint Exercise of Powers Act. The purpose of this Agreement is to establish a public entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to a joint powers entity under the Joint Powers Act or any other applicable law, including, but not limited to, the issuance of Bonds for any purpose or activity permitted under the Joint Exercise of Powers Act or any other applicable law. Such purpose will be accomplished and said power exercised in the manner hereinafter set forth.

**Section 2. Term.**

This Agreement shall become effective in accordance with Section 17 as of the date hereof and shall continue in full force and effect until such time as it is terminated in writing by all the Members; provided, however, that this Agreement shall not terminate or be terminated until all Bonds issued or caused to be issued by the Authority (defined below) shall no longer be outstanding under the terms of the indenture, trust agreement or other instrument pursuant to which such Bonds are issued, or unless a successor to the Authority assumes all of the Authority’s debts, liabilities and obligations.

**Section 3. Authority.**

A. CREATION AND POWERS OF AUTHORITY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the “California Municipal Finance Authority” (the “Authority”), and said Authority shall be a public entity separate and apart from the Members. Its

debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members.

**B. BOARD.**

The Authority shall be administered by the Board of Directors (the “Board,” or the “Directors” and each a “Director”) of the California Foundation for Stronger Communities, a nonprofit public benefit corporation organized under the laws of the State of California (the “Foundation”), with each such Director serving in his or her individual capacity as a Director of the Board. The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein. The number of Directors, the appointment of Directors, alternates and successors, their respective terms of office, and all other provisions relating to the qualification and office of the Directors shall be as provided in the Articles and Bylaws of the Foundation, or by resolution of the Board adopted in accordance with the Bylaws of the Foundation.

All references in this Agreement to any Director shall be deemed to refer to and include the applicable alternate Director, if any, when so acting in place of a regularly appointed Director.

Directors may receive reasonable compensation for serving as such, and shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Director, if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

The Foundation may be removed as administering agent hereunder and replaced at any time by amendment of this Agreement approved as provided in Section 16; provided that a successor administering agent of this Agreement has been appointed and accepted its duties and responsibilities under this Agreement.

**C. OFFICERS; DUTIES; OFFICIAL BONDS.**

The officers of the Authority shall be the Chair, Vice-Chair, Secretary and Treasurer (defined below). The Board, in its capacity as administering agent of this Agreement, shall elect a Chair, a Vice-Chair, and a Secretary of the Authority from among Directors to serve until such officer is re-elected or a successor to such office is elected by the Board. The Board shall appoint one or more of its officers or employees to serve as treasurer, auditor, and controller of the Authority (the “Treasurer”) pursuant to Section 6505.6 of the Joint Exercise of Powers Act to serve until such officer is re-elected or a successor to such office is elected by the Board.

Subject to the applicable provisions of any resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing Bonds (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an “Indenture”) providing for a trustee or other fiscal agent, and except as may otherwise be

specified by resolution of the Board, the Treasurer is designated as the depository of the Authority to have custody of all money of the Authority, from whatever source derived and shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Joint Exercise of Powers Act.

The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond with the Secretary of the Authority in the amount specified by resolution of the Board but in no event less than \$1,000.

The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Board shall have the power, by resolution, to the extent permitted by the Joint Exercise of Power Act or any other applicable law, to delegate any of its functions to one or more of the Directors or officers, employees or agents of the Authority and to cause any of said Directors, officers, employees or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Board or the Authority.

D. MEETINGS OF THE BOARD.

(1) Ralph M. Brown Act.

All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California), or any successor legislation hereinafter enacted (the "Brown Act").

(2) Regular Meetings.

The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

(5) Quorum.

A majority of the Board shall constitute a quorum for the transaction of business. No action may be taken by the Board except upon the affirmative vote of a majority of the Directors constituting a quorum, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Authority may adopt, from time to time, by resolution of the Board such rules and regulations for the conduct of its meetings and affairs as may be required.

**Section 4. Powers.**

The Authority shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for any purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Authority is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to make grants, loans or provide other financial assistance to governmental and nonprofit organizations (e.g., the Members or the Foundation) to accomplish any of its purposes; and generally to do any and all things necessary or convenient to accomplish its purposes.

Without limiting the generality of the foregoing, the Authority may issue or cause to be issued Bonds, and pledge any property or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law; provided, however, the Authority shall not issue Bonds with respect to any project located in the jurisdiction of one or more Members unless the governing body of any such Member, or its duly authorized representative, shall approve, conditionally or unconditionally, the project, including the issuance of Bonds therefor. Such approval may be evidenced by resolution, certificate, order, report or such other means of written approval of such project as may be selected by the Member (or its authorized representative) whose approval is required. No such approval shall be required in

connection with Bonds that refund Bonds previously issued by the Authority and approved by the governing board of a Member.

The manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California general law city could exercise such powers and perform such duties. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

**Section 5. Fiscal Year.**

For the purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year as established from time to time by resolution of the Board, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 2004.

**Section 6. Disposition of Assets.**

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Members.

**Section 7. Bonds.**

From time to time the Authority shall issue Bonds, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing shall be used by the Authority. The expenses of the Board shall be paid from the proceeds of the Bonds or any other unencumbered funds of the Authority available for such purpose.

**Section 8. Bonds Only Limited and Special Obligations of Authority.**

The Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members or the Authority. The Bonds shall be only special obligations of the Authority, and the Authority shall under no circumstances be obligated to pay the Bonds except from revenues and other funds pledged therefor. Neither the Members nor the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members nor the faith and credit of the Authority shall be pledged to the payment of the

principal of, premium, if any, or interest on the Bonds nor shall the Members or the Authority in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Bond or related document shall be deemed to be a covenant or agreement of any Director, or any officer, employee or agent of the Authority in his or her individual capacity and neither the Board of the Authority nor any Director or officer thereof executing the Bonds shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

**Section 9. Accounts and Reports.**

All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by each Member.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member and also with the county auditor of each county in which a Member is located; provided, however, that to the extent permitted by law, the Authority may, instead of filing such report with each Member and such county auditor, elect to post such report as a public record electronically on a website designated by the Authority. Such report if made shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

The Treasurer is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board and the Members which report shall describe the amount of money held by the Treasurer for the Authority, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provided regular reports covering such amounts.)

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

In any Fiscal Year the Board may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

**Section 10. Funds.**

Subject to the applicable provisions of any Indenture, which may provide for a trustee or other fiduciary to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to the accounting procedures developed under Sections 3.C and 9, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions of purposes of this Agreement.

**Section 11. Notices.**

Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk of the governing body of each Member; provided, however, that to the extent permitted by law, the Authority may, provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

**Section 12. Additional Members/Withdrawal of Members.**

Qualifying public agencies may be added as parties to this Agreement and become Members upon: (1) the filing by such public agency with the Authority of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any Bonds remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

**Section 13. Indemnification.**

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Director or an officer, employee of other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Director or an officer, employee or other agent of the Authority, against expenses, including attorneys fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

**Section 14. Contributions and Advances.**

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Authority by the Members for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution or advance. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the Authority and the Member making such advance at the time of such advance. It is mutually understood and agreed to that no Member has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though any Member may do so. The Members understand and agree that a portion of the funds of the Authority that otherwise may be allocated or distributed to the Members may instead be used to make grants, loans or provide other financial assistance to governmental units and nonprofit organizations (e.g., the Foundation) to accomplish any of the governmental unit's or nonprofit organization's purposes.

**Section 15. Immunities.**

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, and other benefits which apply to the activity of officers, agents or employees of Members when performing their respective functions within the territorial limits of their respective public agencies, shall apply to the same degree and extent to the Directors, officers, employees, agents or other representatives of the Authority while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

**Section 16. Amendments.**

Except as provided in Section 12 above, this Agreement shall not be amended, modified, or altered, unless the negative consent of each of the Members is obtained. To obtain the negative consent of each of the Members, the following negative consent procedure shall be followed: (a) the Authority shall provide each Member with a notice at least sixty (60) days prior to the date such proposed amendment is to become effective explaining the nature of such proposed amendment and this negative consent procedure; (b) the Authority shall provide each Member who did not respond a reminder notice with a notice at least thirty (30) days prior to the date such proposed amendment is to become effective; and (c) if no Member objects to the proposed amendment in writing within sixty (60) days after the initial notice, the proposed amendment shall become effective with respect to all Members.

**Section 17. Effectiveness.**

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Members on the date that the Board shall have received from two of the Initial Members an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Initial Member approving this Agreement and the execution and delivery hereof.

**Section 18. Partial Invalidity.**

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

**Section 19. Successors.**

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the other Members.

**Section 20. Miscellaneous.**

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement is the complete and exclusive statement of the agreement among the Members, which supercedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the City of Hayward has caused this Agreement to be executed and attested by its duly authorized representatives as of the \_\_\_\_ day of \_\_\_\_\_, 2017.

Member:

CITY OF HAYWARD

By \_\_\_\_\_  
Name:  
Title:

ATTEST:

\_\_\_\_\_  
Clerk

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD AUTHORIZING THE CITY MANAGER TO EXECUTE MEMBER ADDENDUMS TO THE ASSOCIATION OF BAY AREA GOVERNMENTS REGIONAL COLLABORATIVE SERVICES AGREEMENT WITH RESIDENTIAL PACE PROGRAMS OPERATING IN HAYWARD.

WHEREAS, The City of Hayward has authorized residential PACE Programs to operate in Hayward, including, but not limited to, AllianceNRG, CaliforniaFIRST, HERO Program, PACE Funding, and Ygrene Funding; and

WHEREAS, the Association of Bay Area Governments has created and executed a Regional Collaborative Services Agreement (RCSA) for residential PACE Programs operating in the Bay Area to improve transparency and reporting standards; and

WHEREAS, the RCSA does not include any financial arrangements between the City of Hayward and the PACE Programs, nor does it preclude any separate contracts for services or support; and

WHEREAS, the purpose of the RCSA is to set forth the mutual understandings, terms and conditions related to residential PACE Programs participating in the PACE Financing Marketplace in the City of Hayward; and

WHEREAS, individual cities are encouraged to execute member addendums to the RCSA with each residential PACE Program operating in their city.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is authorized to execute member addendums to the Regional Collaborative Services Agreement with all residential PACE Programs operating in Hayward now or in the future.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

SAMPLE MEMBER ADDENDUM TO THE  
REGIONAL COLLABORATIVE SERVICES AGREEMENT  
FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING MARKETPLACE

This agreement ("Agreement"), dated as of \_\_\_\_\_, 2017 ("Effective Date") is by and between the [city/county name], a [legal definition] (hereinafter "Agency"), and [insert PACE program provider name], (hereinafter "Marketplace Member"), as an entity participating in the Financing Marketplace administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model.

RECITALS

WHEREAS, the [city, county] 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, [city, county] has passed a Resolution [number] stating its support and partnership in implementing and marketing the PACE programs in [City, county]; and

WHEREAS, the [Agency] offers programs, technical resources and education for energy upgrades and retrofits; and

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

WHEREAS, the [Agency] seeks to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, tools and testing equipment, contractor programs, and financing options; and

WHEREAS, the Marketplace Member will meet or exceed the collaboration requirements of the Financing Marketplace as detailed below; and

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

WHEREAS, the Marketplace Member will provide support and resources to [Agency] related to education, outreach and development of the energy upgrade industry and trades; and

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

WHEREAS, the Marketplace Member will share project information and data in an accessible electronic format with the Team on a quarterly basis and upon request within ten (10) business days; and

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

WHEREAS, this Agreement does not include any financial arrangements between the Marketplace Member and the [city, county], nor does it preclude any separate contracts for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings, terms and conditions related to Marketplace Members participating in the PACE Financing Marketplace in the [city, county] and participating cities/towns.

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 financing provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening improvements and electric vehicle charging infrastructure improvements that will be permanently fixed to real property, and any

additional improvements deemed eligible in the future by the California legislature.

- 1.2 "Financing Marketplace" is the [city, county] model for providing multiple financing options to property owners interested in retrofit and renewable energy improvements to their buildings.
- 1.3 "Local Contractor" is defined as the licensed contractor of record with a business address within [city, county] or an adjacent county.
- 1.4 "Marketplace Member" is an entity participating in the Financing Marketplace administering a program providing Property Assessed Clean Energy (PACE) financing within [city, county].
- 1.5 "Participating Cities /Towns" in [city, county] are potentially [\_\_\_\_\_].
- 1.6 "Participating Contractor" is any contractor who has agreed to, and abides, by the terms and conditions of the Marketplace Members' contractor standards.
- 1.7 "Property Assessed Clean Energy (PACE) Financing" is a means of financing distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening 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, 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.
- 1.8 "Agency" is made up of staff from the [city/county]
- 1.9 "Work" as defined throughout this Agreement is the collaborative, non-competitive, effort between the Marketplace Member and the [city/county] to deliver the financing marketplace and support the citizens of [city/county] in completing water and energy efficiency upgrades and the installation of renewable energy.

## 2 Scope of Work / Collaboration.

- 2.1 Marketplace Member's Specified Services. The Marketplace Member will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555 in collaboration with the Team.

- 2.2 Cooperation with [Agency]. Marketplace Member shall cooperate with [Agency] staff in the performance of all work hereunder.
- 2.3 Performance Standard. Marketplace Member 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. [Agency] has relied upon the professional ability and expertise of Marketplace Member as a material inducement to enter into this Agreement. Marketplace Member 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, it being understood that acceptance of Marketplace Member's work by County shall not operate as a waiver or release. If [Agency] determines that any of Marketplace Member's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Marketplace Member to discuss with County 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 at law or in equity.
- 2.4 Financing Provision Requirements.  
The Marketplace Member will:
- 2.4.1 Advocate for efficiency measures before generation installation (i.e., include energy efficiency information in contractor training materials and on program website).
- 2.4.2 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.
- 2.4.3 Provide summary of financing details (including assessment amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing

- 2.4.4 For residential properties, require applicant acknowledgment of the Federal Housing Finance Authority position on PACE on a separate signature acknowledgement page. Residential Disclosure Signature Form must be substantially similar to Attachment 1.
- 2.4.5 For non-residential properties, require written lender affirmative acknowledgement
- 2.4.6 Advocate and promote the use of local contractors (i.e., by identifying where the contractors are based on website), as defined Section 1, Definitions, with all applications for financing, results of which will be reported under Section 2.6.2.i.
- 2.4.7 Provide training to contractors and information to property owners on available rebates (for all utility and generation types), including and not limited to city rebate programs, [relevant IOU} programs, and other such programs.
- 2.4.8 Require that all applicable building permits are obtained and finalized for all improvements
- 2.4.9 Verify that property owners are current on all property taxes for the subject property
- 2.4.10 Ensure all marketing materials and calculation methodologies conforms to all applicable tax laws. Do not provide any calculation options that represent that the full assessment payment may be tax deductible. Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project.
- 2.4.11 Include disclaimer language in application materials alerting property owner that it is their responsibility to understand impact of their project on potential local reassessment provisions.
- 2.4.12 Marketplace Member shall have a consistent plan for removal of assessments at end of repayment term and/or in the event of program closure.

## 2.5 Financial Policies.

The Marketplace Member will:

- 2.5.1 For programs offering residential 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.

- 2.5.2 Notify the [Agency] six months in advance if funding capacity available from the Marketplace Member to prospective PACE customers in the County will fall below the amount dispersed in the previous six months of operation
- 2.5.3 Notify the [Agency] of any foreclosure action as a result of a default in the payment of a PACE assessment on property in the [city/county], where the PACE assessment was originated by the Marketplace Member.

## 2.6 Documents, Data, and Information Policies.

The Marketplace Member will:

- 2.6.1 Provide electronic access to the name, business name, and California State Contractors license number of participating contractors of the Marketplace Member's program; and the contractors' agreement with the Marketplace Member.
- 2.6.2 Retain completed Residential Disclosure Signature forms (hardcopy or electronic) on file for duration of assessment. Furnish to County upon request.
- 2.6.3 Provide either direct real-time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) for data sharing of 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)
    - 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
    - iv. Listing of all generation improvements installed and the solar STC-DC rating in watts or kilowatts
    - v. Contractor name
  - b. If available:
    - i. Amount of rebate or incentive dollars associated with the project (not financed)
    - 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 Marketplace Member over the other members

The Marketplace Member will:

- 2.6.4 Provide the documents required for participation in the Marketplace Members' PACE Financing program to the County and Participating City and Town officials.
- 2.6.5 Provide support to County and Participating City and Town staff to facilitate adoption of required participation documents.

The County will:

- 2.6.6 Offer staff resources and support to Participating City and Town staff to bring forward to their councils the documents provided by the Marketplace Member required for participation in the Marketplace Member's PACE financing product.

## 2.7 Branding / Marketing Requirements.

The Parties will:

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

The Marketplace Member will:

- 2.7.4 Provide assistance to the Team for: (1) coordinating and implementing the integration of the Marketplace Member into the Financing Marketplace; and (2) support of contractor training.
- 2.7.5 Provide specific training for contractors engaged with local PACE assessments using the marketplace member's financing product, materials, collateral, tools, and associated software, through training offered either directly from the marketplace member or subcontracted to the Team
- 2.7.6 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the Marketplace Members financing option into the [Agency's] websites

- 2.7.7 Provide training and resources to the Team as needed to build understanding and support for use of the financing product

The Team will:

- 2.7.8 Present the financing products of the Marketplace Members in all venues with impartiality to the public.
- 2.7.9 Present marketing collateral of all financing products with impartiality in education and outreach materials and events

2.8 Participating Contractor Standards.

Participating Contractors must agree to and abide by the terms and conditions of the contractors' standards outlined in items 2.8.1 through 2.8.11 below.

Both Parties will:

- 2.8.1 Require that contractors have the appropriate California State License Board 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 have a proven track record of superior customer satisfaction
- 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 NOT imply through discussions or calculations that the full assessment payment amount may be tax deductible but rather only the interest.

Marketplace Member will:

2.8.10 Via trainings and customer compliant system, require that contractors and its representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of the [Agency], or claim association or affiliation with the [Agency]

2.9 Interaction with Tax Collector Processes.

Marketplace Member will: Independently engage the [County] Tax Collector for administration of property tax assessments placed through its financing product.

Payment. This Agreement does not include any financial arrangements between the Marketplace Member and the County, nor does it preclude any separate contracts for services or support.

3 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.

4 Termination.

4.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, [Agency] or Marketplace Member shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party of this Agreement.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the Marketplace Member fail to uphold any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, [Agency] may immediately terminate this Agreement by giving Marketplace Member written notice of such termination, stating the reason for termination.

4.3 Delivery of Data and Information upon Termination. In the event of termination, Marketplace Member, within 14 days following the date of termination, shall deliver to County all raw data and information in an editable electronic format as outlined in Section 2.6, Document, Data, and Information Policies.

4.4 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the [Agency]

Director, in consultation with [city/county] Counsel, shall have the authority to terminate this Agreement on behalf of the [Agency].

4.5 Effect of Termination. In the event of termination pursuant to this Section 5, the Marketplace Member shall:

4.5.1 Not enter into new assessment contracts as of the date of the termination. The Marketplace Member may continue to collect assessments or special taxes with the County for assessment contracts entered into prior to such date of termination.

4.5.2 Communicate to County Assessor's Office designated tax collector for remaining outstanding assessments.

5 Indemnification and Liability. Marketplace Member agrees to accept all responsibility for loss or damage to any person or entity, including [Agency], and to indemnify, hold harmless, and release [Agency], their officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Marketplace Member, that arise out of, pertain to, or relate to the negligent actions or willful misconduct of Marketplace Member's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Marketplace Member agrees to provide a complete defense for any claim or action brought against [Agency] based upon a claim relating to such Marketplace Member's or its agents', employees', contractors', subcontractors', or invitees' the negligent actions or willful misconduct of under this Agreement. Marketplace Member's obligations under this Section apply whether or not there is concurrent negligence on [Agency's] part, but to the extent required by law, excluding liability due to [Agency's] conduct. County shall have the right to select its legal counsel at Marketplace Member's expense, subject to Marketplace Member's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Marketplace Member or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6 Prosecution of Work. The execution of this Agreement shall constitute Marketplace Member's authority to proceed immediately with the performance of this Agreement.

- 7 Representations of Marketplace Member.
- 7.1 Standard of Care. [Agency] has relied upon the professional ability and training of Marketplace Member as a material inducement to enter into this Agreement. Marketplace Member 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, it being understood that acceptance of Marketplace Member's work by [Agency] shall not operate as a waiver or release.
- 7.2 Status of Marketplace Member. The parties intend that Marketplace Member, 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. Marketplace Member is not to be considered an agent or employee of [Agency] and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits [Agency] provides its employees.
- 7.3 Conflict of Interest. Marketplace Member 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. Marketplace Member further covenants that in the performance of this Agreement no person having any such interests shall be employed.
- 7.4 Statutory Compliance. Marketplace Member agrees to comply with all applicable 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.
- 7.5 Nondiscrimination. Without limiting any other provision hereunder, Marketplace Member 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, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.



TO: MARKETPLACE MEMBER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: ( ) -

Email address (opt): \_\_\_\_\_

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.

11 Miscellaneous Provisions.

11.1 No Waiver of Breach. The waiver by [Agency] 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.

11.2 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.

11.3 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.

- 11.4 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.
- 11.5 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 [Appropriate Jurisdiction].
- 11.6 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.
- 11.7 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.
- 11.8 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.
- 11.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

Continued on next page:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MARKETPLACE MEMBER:

[City/County]: [Name]

\_\_\_\_\_

CERTIFICATES OF INSURANCE ON  
FILE WITH AND APPROVED AS TO  
SUBSTANCE FOR [Agency]:

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

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

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

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM FOR COUNTY:

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

[City/County] Counsel

Date: \_\_\_\_\_