

**AGREEMENT BETWEEN  
COUNTY OF SAN LUIS OBISPO  
AND  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS FOR  
RESIDENTIAL PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM  
ADMINISTRATION**

This agreement ("Agreement"), dated as of \_\_\_\_\_, 2015 ("Effective Date") is by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California (hereinafter "County"), and the Western Riverside Council of Governments, a California public agency ("WRCOG"), administrator of California HERO (Home Energy Renovation Opportunity) Program, (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 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**, on June 2, 2015, the San Luis Obispo County Board of Supervisors approved a resolution expressing its support and interest in partnering with a Marketplace Member in order to implement and market a Residential PACE Program in the County; and

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

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

**WHEREAS**, the County 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 the County 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 support and coordinate with energy programs administered by the County; 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 County 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 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 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 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 the 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 the County.
- 1.5 **"Participating Cities /Towns"** are cities and towns in the County that may elect to participate in the PACE Program administered by Marketplace Member.
- 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 County.
- 1.9 **"Work"** as defined throughout this Agreement is the collaborative, non-competitive, effort between the Marketplace Member and the County to deliver the Financing Marketplace and support the citizens of the 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 (PACE) Financing under the requirements of AB 811 and/or SB 555 in collaboration with the County.
- 2.2 Cooperation with the 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. The County 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 the County shall not operate as a waiver or release. If the County determines that any of Marketplace Member's work is not in accordance with such level of competency and standard of care, the County, in its sole discretion, shall have the right to do any or all of the following: (a) require Marketplace Member to discuss with the 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 Require applicant acknowledgment of the Federal Housing Finance Authority position on PACE on a separate signature acknowledgement page.
- 2.4.5 Advocate and promote the use of Local Contractors (i.e., by identifying where the contractors are based on Marketplace Member's PACE financing program website), as defined Section 1, Definitions.
- 2.4.6 Provide training to contractors and information to property owners on available rebates (for all utility and generation types), including and not limited to county rebate programs, and other such programs.
- 2.4.7 Coordinate with energy programs administered by the County and leverage marketing, education, outreach, and development efforts.
- 2.4.8 Require that all applicable building permits are obtained for all improvements.
- 2.4.9 Verify that property owners are current on all property taxes for the subject property.
- 2.4.10 Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project, and not recommend or indicate that homeowners take any particular filing position regarding their annual or semi-annual PACE Assessment payments
- 2.4.11 Include disclaimer language in application materials alerting property owner that it is their responsibility to understand the impact of their project on potential local reassessment provisions.
- 2.4.12 Marketplace Member shall have a consistent plan for removal of assessments at the end of the repayment term and/or in the event of program closure.

2.5 Financial Policies.

The Marketplace Member will:

- 2.5.1 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.
- 2.5.2 Notify the County 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 County of any foreclosure action as a result of a default in the payment of a PACE assessment on property in the 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 financing 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 County 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 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 County 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 subcontractor to the County.
- 2.7.6 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the Marketplace Members financing options into the County's websites.

- 2.7.7 Provide training and resources to the County as needed to build understanding and support for use of the Marketplace Member's PACE financing product.

The County will:

- 2.7.8 Present the financing products of the Marketplace Member 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 2.8.9 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 make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor.
- 2.8.6 NOT make any warranty regarding the contractor's work or products purchased from contractors provided.
- 2.8.7 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.
- 2.8.8 Comply with the provisions of Section 2.4.10.

Marketplace Member will:

- 2.8.10 Via trainings and a customer compliant system, require that contractors and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or

employees of the County, or claim association or affiliation with the County.

**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.

**3 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.

**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, the County 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.

**5.2 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, the County may immediately terminate this Agreement by giving Marketplace Member written notice of such termination, stating the reason for termination.

**5.3 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.

**5.4 Authority to Terminate.** The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Director of the Department of Planning and Building, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

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

**5.5.1** 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.

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

**6 Indemnification and Liability.** Marketplace Member agrees to accept all responsibility for loss or damage to any person or entity, including the County, and its 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 County employees', contractors', subcontractors', or invitees' that arise out of, pertain to, or relate to the negligent actions or willful misconduct of Marketplace Member under this Agreement. Marketplace Member's obligations under this Section apply whether or not there is concurrent negligence on the County's part, to the extent required by law, excluding liability due to the County'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.

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

**8 Representations of Marketplace Member.**

8.1 Standard of Care. The County 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 of 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 the County shall not operate as a waiver or release.

- 8.2 **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 the County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits the County provides its employees.
- 8.3 **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.
- 8.4 **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.
- 8.5 **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.
- 8.6 **Authority.** The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Marketplace Member.
- 9 **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. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. 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 County's right to terminate this Agreement pursuant to Section 5, Termination.

**10 Assignment and Delegation.** Neither 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 Marketplace Member 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 the County provided that the successor expressly assumes all of the obligations, including this Agreement, and confirms all of the representations, warranties and covenants of Marketplace Member hereunder.

**11 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. Notices shall be addressed as follows:

To County: Trevor Keith, Deputy Director  
Department of Planning and Building  
976 Osos Street, Room 370  
San Luis Obispo, California 93408-2040

To Marketplace Member: Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor, MS 103  
Riverside, CA 92373  
Facsimile: (951) 787-7991

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.

**12 Miscellaneous Provisions.**

- 12.1 No Waiver of Breach. The waiver by the County 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.
- 12.2 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. Marketplace Member and County 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. Marketplace Member and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 12.3 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.
- 12.4 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.
- 12.5 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 San Luis Obispo.
- 12.6 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.
- 12.7 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.

12.8 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.

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

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

COUNTY OF SAN LUIS OBISPO:

By: \_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL  
County Counsel

By:   
Deputy County Counsel

Date: 11.4.15

MARKETPLACE MEMBER:  
WESTERN RIVERSIDE COUNCIL OF  
GOVERNMENTS

By: 

Name: RICK BISHOP

Title: EXECUTIVE DIRECTOR

Date: 11/4/15

APPROVED AS TO FORM:

By:   
Mrunal Mehta Shah  
Best Best & Krieger LLP

Date: November 4, 2015