

**OPERATING AGREEMENT BETWEEN
CONTRA COSTA COUNTY AND PACE PROVIDER FOR
PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING**

This agreement ("Agreement"), dated as of _____, 2015 ("Effective Date"), is by and between Contra Costa County, a political subdivision of the State of California (the "County"), and the Western Riverside Council of Governments, a California limited joint powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following (the "PACE Provider").

RECITALS

A. Property Assessed Clean Energy (PACE) financing is a method of providing loans to property owners to finance permanent energy efficiency improvements on real property. A property owner who obtains a PACE loan repays the loan by entering into an agreement that allows an assessment to be levied on the property. These assessments are known as voluntary contractual assessments.

B. Voluntary contractual assessments that are utilized to finance the installation of energy efficiency improvements on real property are authorized by (1) the Improvement Act of 1911, as amended by AB 811 (Streets and Highways Code Section 5898.10 et seq.) ("Improvement Act") and (2) the Mello-Roos Community Facilities Act of 1982, as amended by SB 555 (Government Code Section 53311 et seq. ("Mello-Roos Act").

C. The PACE Provider is a joint exercise of powers authority that was created to establish a PACE financing program. The PACE Provider has established the HERO Program ("PACE Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by property owners participating in the PACE Program. Under the PACE Program, the PACE Provider accepts applications from eligible property owners, conducts assessment proceedings, and levies assessments.

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

AGREEMENT

1. **Definitions.** As used in this Agreement, the following terms have the following meanings:

- a. "PACE Administrator" means an independent contractor of the PACE Provider that markets, administers and carries out the PACE Program on behalf of the PACE Provider.

- b. "Eligible Improvement" is a renewable energy improvement, energy efficiency improvement or other improvement authorized by the Improvement Act, the Mello-Roos Act or other state law pertaining to voluntary contractual assessments.
- c. "Non-residential Property" means a property with four or more residential units or any commercial, agricultural, or industrial property that is otherwise eligible for PACE Financing.
- d. "Participating Contractor" is any contractor that installs Eligible Improvements that are funded by a PACE Provider.
- e. "Program Participant" is a property owner who enters into a voluntary contractual assessment with the PACE Provider.
- f. "Property Assessed Clean Energy (PACE) Financing" is a means of financing Eligible Improvements as authorized by the Improvement Act, the Mello-Roos Act, or other state law pertaining to voluntary contractual assessments.
- g. "Residential Property" means a property with three or fewer residential units.
- h. "Value" means the greater of: (1) assessed value; or (2) fair market value, as determined either by an automated valuation model or an appraisal.

2. General Requirements.

- a. PACE Provider's Specified Services. The PACE Provider may offer and provide Property Assessed Clean Energy Financing to property owners in the unincorporated areas of the County. The PACE Provider is solely responsible for the formation, operation and administration of the PACE Program, including the conduct of assessment proceedings, the levy and collection of assessments, and the offer, sale and administration of any bonds issued by the PACE Provider on behalf of the PACE Program.
- b. Cooperation with County. The PACE Provider shall independently operate its program and cooperate with the County and County staff as described in this Agreement.
- c. Performance Standard. The PACE Provider shall provide PACE Financing in a manner consistent with the level of competency and standard of care normally observed by an organization providing PACE Financing pursuant to the Improvement Act or Mello-Roos Act.

3. Disclosure Requirements.

The PACE Provider shall do all of the following:

- a. Disclose in writing to potential Program Participants the financial risks associated with PACE Financing, including the risks associated with federal regulation and administration of mortgage financing and the position of the Federal Housing Finance Agency (FHFA) on PACE lending. The disclosure materials must include the following: (1) the disclosures contained in the HERO Financing Program Application, which is attached and incorporated herein as Attachment A; (2) a copy of the August 20, 2014 FHFA letter to Santa Clara County regarding PACE lending, which is attached and incorporated herein as Attachment B.
- b. Require potential Program Participants to sign a written acknowledgment of the Federal Housing Finance Agency (FHFA) position on PACE liens.
- c. Require Program Participants who own non-residential properties to obtain written consent to participate in the PACE Program from lenders who have made loans to the Program Participant where the property serves as security for the loan.
- d. Provide federal Truth in Lending Act disclosure details to the applicant specific to the requested amount of the financing. The details shall be provided to the applicant on the HERO Financing Estimate, which is attached and incorporated herein as Attachment C.
- e. Advise potential Program Participants of available state or federal rebate or incentive programs.
- f. Require each Program Participant to obtain from the County all building permits for improvements.
- g. The PACE Provider may recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project.

4. Financial Requirements.

- a. The PACE Provider shall administer and review Program Participant eligibility and determine the Eligible Improvement costs to be financed.
- b. The PACE Provider shall establish its own interest rates, payback terms and fees.

- c. The PACE Provider shall participate in the State of California's PACE Loss Reserve Program, administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), and provide evidence of current participation and copies of all application materials submitted to CAEATFA. If the State discontinues the PACE Loss Reserve Program, or if the County determines that the State's PACE Loss Reserve Program does not provide adequate coverage, then the County may terminate this Agreement unless the County is satisfied with coverage by an alternative loan loss reserve program.
 - d. For residential properties, the PACE Provider will ensure that the loan amount to a Program Participant does not exceed 15% of the value of the property up to the first \$700,000 of the value of the property, and is for less than 10% of the remaining value of the property above \$700,000.
 - e. The PACE Provider shall ensure that any loans existing prior to the proposed PACE lien have an aggregate amount of no more than 95% of the value of the property, including all mortgage-related debt as determined as of the date the assessment contract is executed.
 - f. The PACE Provider shall ensure that the total property taxes and assessments for each property that will have PACE Financing will not exceed 5% of the value of the property as determined as of the date the assessment contract is executed.
 - g. The PACE Provider shall verify that each Program Participant is current on all property taxes and has not made late payments in the past three years, and verify that each Program Participant has not filed for bankruptcy in the past three years.
 - h. It is the PACE Provider's obligation to coordinate with the Auditor-Controller's Office each year regarding delinquent assessments.
5. Reports.

For each property that has entered into a voluntary contractual assessment through the PACE Provider, the PACE Provider shall provide project information and data in an accessible electronic format to the County on a monthly and annual basis and upon request, including but not limited to the following:

- a. The Assessor's Parcel Number (APN) and property type (residential or non-residential) of the property.
- b. The amount of the contractual assessment.
- c. All installed Eligible Improvements financed through PACE Financing.

- d. The solar STC-DC rating in watts or kilowatts of each Eligible Improvement.
 - e. The expected financial and energy savings associated with each Eligible Improvement.
 - f. For each property with a limited subordinate agreement, the effective date of that agreement.
6. Participating Contractor Obligations. The PACE Provider shall ensure that each Participating Contractor agrees to and abides by the following terms and conditions:
- a. Each Participating Contractor shall have all required California State License Board licenses and all other required State and County licenses.
 - b. Each Participating Contractor's bonding must be in good standing.
 - c. Each Participating Contractor shall hold harmless, indemnify and defend the County as set forth in Section 9 (c).
 - d. Each Participating Contractor shall have insurance as required in Section 12 (b).
 - e. Participating Contractors and their representatives, employees, and agents shall not represent themselves as agents, representatives, contractors, subcontractors, or employees of the County or the Department of Conservation and Development or claim association or affiliation with the County or Department of Conservation and Development.
7. Agreement with County Auditor-Controller. The PACE Provider will enter into a separate agreement with the Contra Costa County Auditor-Controller for the administration of property tax assessments placed on properties through the PACE Financing program.
8. Agreement with Program Participant. Each voluntary contractual assessment between the PACE Provider and a Program Participant shall require the Program Participant to hold harmless, indemnify and defend the County in accordance with the terms set forth in Attachment D, attached hereto. The terms set forth in Attachment D shall be incorporated into the PACE Provider's voluntary contractual assessment with each Program Participant for PACE Financing.
9. Indemnification and Release.
- a. Indemnification Obligation of the PACE Provider. To the fullest extent not prohibited by applicable law, the PACE Provider shall defend, indemnify,

protect, save, and hold harmless the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively and individually the "Indemnitees"), from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (collectively "Liability") arising out of or connected with this Agreement or activities taken by the parties pursuant to this Agreement, including: (i) any claim, action or proceeding to attack, set aside, void, abrogate, rescind or annul this Agreement or the actions of either party under this Agreement; (ii) the placement or collection of assessments on participating properties; or (iii) the acts, errors or omissions of the PACE Provider, its officers, employees, agents, contractors, subcontractors, or any person under its direction or control in connection with this Agreement; and will make good to and reimburse Indemnitees for any expenditures, including reasonable attorney's fees, the Indemnitees may make by reason of such matters. If requested by any of the Indemnitees, the PACE Provider will defend any such suits at the sole cost and expense of the PACE Provider with counsel selected or approved by the Contra Costa County Counsel.

The PACE Provider's obligations under this section will exist regardless of concurrent negligence or willful misconduct on the part of any Indemnitee or any other person; provided, however, that the PACE Provider will not be required to indemnify Indemnitees for the proportion of Liability a court determines is attributable to the sole negligence or willful misconduct of the County, its governing body, officers or employees. This indemnification clause shall survive the termination or expiration of this Agreement.

b. PACE Provider's Release. To the fullest extent not prohibited by applicable law, the PACE Provider hereby releases and forever discharges the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively "Released Parties"), from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (including without limitation, attorneys fees and expenses), which the PACE Provider now has or could assert in any manner arising out of or connected with this Agreement, the subject matter of this Agreement, or activities taken by the parties pursuant to this Agreement, including any claim, action or proceeding to attack, set aside, void, abrogate, rescind or annul this Agreement or the actions of either party under this Agreement. The PACE Provider knowingly waives the right to make any claim against the Released Parties for such damages and expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

The rights and obligations contained in this paragraph will survive termination of this Agreement.

c. Indemnification and Release Obligations of Participating Contractors. The PACE Provider must require each Participating Contractor to release, defend, indemnify, protect, save, and hold harmless the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns, from any and all liability, claims, losses, costs, expenses, penalties, fines, forfeitures, judgments and damages, including attorneys’ fees and costs, arising out of or connected with the Participating Contractor’s actions under the PACE Program, including the installation of any Eligible Improvement.

10. Term of Agreement. The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 11, Termination.

11. Termination.

- a. Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, the County or PACE Provider 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. This Agreement may be cancelled immediately by written mutual consent.
- b. Termination for Cause. Notwithstanding any other provision of this Agreement, if the PACE Provider fails to uphold any of its obligations under this Agreement, or otherwise violates any of the terms of this Agreement, the County may immediately terminate this Agreement by giving the PACE Provider written notice of such termination, stating the reason for termination.
- c. Discontinuation of PACE Program. Upon 24 hours’ notice from the County, the PACE Provider shall immediately discontinue its residential PACE Program in the County’s unincorporated area if the Federal Housing Finance Authority (FHFA) takes any action in California pertaining to PACE Financing, as it relates to Fannie Mae and Freddie Mac mortgages, that the County determines will create an undue liability to the County or Program Participants.
- d. Delivery of Data and Information upon Termination. In the event of termination and within 14 days following the date of termination, the PACE Provider must deliver to County all data and information for all properties with contractual assessments, as specified in Section 5, Reports.

- e. **Effect of Termination.** If the Board of Supervisors terminates this agreement pursuant to this Section 11, the PACE Provider may not solicit new assessment contracts within the unincorporated areas of the County.
- f. **Upon termination of this Agreement or the discontinuance of the PACE Program,** the PACE Provider shall continue to administer all voluntary assessment contracts that exist at the time of the termination.

12. Insurance.

- a. **The PACE Provider is self-insured,** and shall provide the County with a letter of self-insurance within 30 days after the effective date of this Agreement.
- b. **The PACE Provider will ensure that the following insurance requirements are incorporated into all contracts entered into by the PACE Provider with each PACE Administrator and Participating Contractor, or their respective contractors, subcontractors or assigns, in connection with this Agreement:** (1) each PACE Administrator and Participating Contractor must maintain workers' compensation insurance pursuant to state law; (2) each PACE Administrator and Participating Contractor must maintain commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, with a minimum of \$1 million per occurrence; (3) each PACE Administrator and Participating Contractor must maintain vehicle liability insurance with a minimum combined single-limit coverage of \$500,000 per occurrence; and (4) each PACE Administrator shall maintain Professional Liability Errors and Omissions Insurance coverage at \$1,000,000 per occurrence or aggregate limit. Each PACE Administrator and Participating Contractor shall provide certificates of insurance to the County, copies of policies, or endorsements evidencing the above insurance coverage and requiring at least 30 days' written notice to the County of policy lapse, cancellation, or material change in coverage.

13. Miscellaneous Provisions.

- a. **Independent Contractor Status.** The parties intend that the PACE Provider, in implementing and operating the PACE Program, is an independent contractor, and that the PACE Provider will control the work and the manner in which it is performed. This Agreement is not to be construed to create a relationship between the parties of agent, servant, employee, partnership, joint venture, or association. The PACE Provider is not a County employee. This Agreement does not give the PACE Provider any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees.

- b. Compliance with the Law. The PACE Provider is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Agreement, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination.
- c. Authorization. The PACE Provider represents and warrants that it has full power and authority to enter into this Agreement and to perform the obligations set forth herein.
- d. 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. This Agreement binds the heirs, successors, assigns and representatives of the PACE Provider.
- e. 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:

Contra Costa County
Department of Conservation and Development
Deputy Director, Building Inspection Division
30 Muir Road
Martinez, CA 94553

TO PACE PROVIDER:

Rick Bishop
Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor
Riverside, CA 92501
Phone: (951) 955-7985
Fax: (951) 787-7991

The effective date of notice is the date of deposit in the mail or other delivery, except that the effective date of notice to the County is the date of receipt by the Deputy Director, Building Inspection Division, Department of Conservation and Development. 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.

- f. Inspection. Upon the County's request, the County or its designee shall have the right at reasonable times and intervals to inspect the PACE

Provider's financial and program records at the premises of the PACE Provider and the PACE Administrator. The PACE Provider or the PACE Administrator shall maintain all PACE Program records for a period of four years following termination of the Agreement, and shall make them available for copying upon the County's request at the County's expense.


- g. 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.
- h. 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 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. The PACE Provider and the 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.
- i. 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.
- j. 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.
- k. Choice of Law. This Agreement is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- l. 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.
- m. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion, expiration or termination for any reason.
- n. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

- o. Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Agreement will be deemed to exist or to bind any of the parties hereto.
- p. Duplicate Counterparts. This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

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

PACE PROVIDER

CONTRA COSTA COUNTY

By: 
Name: Rick Bishop
Title: Executive Director

By: _____
Name: _____
Title: _____

Attest: 
Best Best & Krieger LLP



P: (855) HERO-411 F: (858) 815-6860 E: info@heroprogram.com

A: 15073 Avenue of Science
San Diego, CA 92128

The Western Riverside Council of Governments (the "Authority") HERO Program (the "Program") finances installation of renewable energy, energy or water efficiency products, or electric vehicle charging infrastructure that are permanently fixed to a property owner's real property ("Eligible Products"). Eligible Products will be financed upon the signing of an assessment contract between the Authority and the property owner ("Assessment Contract"). The Authority has retained Renovate America, Inc. ("RA") to facilitate the Program, and you will see this name throughout the Program materials. The Authority and RA are referred to collectively therein as "Program Administrator."

Property Owner Acknowledgments

In order to participate in the Program, I understand that I need to meet the qualifications listed below. By signing this Application, I acknowledge and represent to the best of my knowledge that I and any other owner(s) of the property which is the subject of this application (the "Property") meet these qualifications and I authorize the Program Administrator to obtain a credit report for each of the Property owner(s) and/or trustees whose social security number is provided on this application.

1. Applicant(s) must be the owner(s) of record for the respective Property;
2. Mortgage-related debt on the Property must not exceed 90% of the value of the Property;
3. Property owner(s) must be current on their property taxes and there must be no more than one late payment in the past three years;
4. Property owners must be current on all Property debt of the subject Property at the time of application and cannot have had more than one 30 day mortgage late payment over the previous 12 months;
5. Property owner(s) must not have had any active bankruptcies within the past two years, and the Property must not be an asset in an active bankruptcy. If a bankruptcy was discharged between two and seven years prior, and the property owner(s) has not had any additional late payments more than 60 days past due in the last 24 months, the property owner may be considered for approval; and
6. The Property must not have any federal or state income tax liens, judgment liens, mechanic's liens, or similar involuntary liens.

I understand that to qualify for the Program that the following requirements must be met:

- a. The amount to be financed under the Program must be less than 15% of the value of the Property on the first \$700,000 value, and less than 10% of any remaining value of the Property thereafter.
- b. The combined amount to be financed under the Program plus the mortgage related debt must not exceed 100% of the value of the Property.
- c. In accordance with State Law, the all-in tax rate on the Property (including the Assessment and any other assessments) may not exceed 5% of the Property value.
- d. All Property owners must sign all required documentation, including but not limited to the Application, the Completion Certificate and the Assessment Contract with all other required Financing Documents.
- e. Following approval, my contractor or I must call the Program to identify the Eligible Products I would like to purchase, enter into an Assessment Contract with the Authority, and receive Notification to Proceed from the Program before beginning the installation of any Eligible Products. Products which have not been approved by the Program will not be funded.
- f. Interest rates may change from the approval date to receiving the Notification to Proceed.

By signing this Application, I hereby declare under penalty of perjury under the laws of the State of California all of the following:

1. That the information provided in this Application is true and correct as of the date set forth opposite my signature on the Application and that I understand that any intentional or negligent misrepresentation(s) of the information contained in this Application may result in civil liability and/or criminal penalties including, but not limited to, imprisonment, liability for monetary damages to the Authority, its agents, or successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I have made in this Application, or both.
2. I have the authority to authorize the Program Administrator to obtain a credit report for each of the Property owner(s) and/or trustee(s) whose social security number(s) is provided on this Application.
3. I understand that it is my responsibility to receive, read and understand all documents comprising the Program, which, in addition to information on the Program website, include the following:
 - a. This Application;
 - b. Privacy Policy Notice;
 - c. Assessment Contract; and
 - d. Program Handbook.

I have had an opportunity to speak with Program representatives and my legal counsel on any questions I have regarding the documents listed above. I am also aware that Property owners are encouraged to consult with legal counsel or a tax professional of their choice before entering into an Assessment Contract.

4. I am applying to participate in the Program. I have the authority, without the consent of any third party, to execute and deliver this Application, the Assessment Contract, and the various other documents and instruments referenced herein.
5. I understand that the financing provided pursuant to the Assessment Contract will be repayable through an assessment levied against the Property. I understand that an assessment lien will be recorded by the Authority against the Property in the office of the County Recorder of the County of Contra Costa upon execution of the Assessment Contract. The property tax bill (which will include the assessment payments) for the Property will increase by



the amount of these assessment installment payments. The Assessment Contract will specify the amount of the assessment, the assessment installments and the interest on the assessment to be collected on the property tax bill for the Property each year during the term specified in the Assessment Contract. The assessment and the interest and any penalties thereon will constitute a lien against the Property until they are paid. As with all tax and assessment liens, this lien will be senior to all existing and future private liens against the Property, including mortgages, deeds of trust and other security instruments.

Disclosures

The following describes some (but not all) characteristics and risks of participation in the Program as well as laws to which the Program is subject. A full understanding of any item listed below can be gained only by reviewing the relevant laws, policy statements, and/or the contractual documents related to the Program. The Program Administrator is available to answer questions regarding the items listed below before you enter into an Assessment Contract, and invites you to ask Program representatives any questions regarding these items or if you need copies of any document related to the Program.

1. Program Disclosures and Disclaimers.

- a. **Existing Mortgage.** The Program establishes the manner by which the Authority may finance, pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.10), the installation of Eligible Products. Eligible Products will be financed pursuant to an Assessment Contract between you and the Authority.

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

If your lender requires an impound for your property taxes, please consider notifying them of the annual assessment payment amount so they can adjust your impound amount.

- b. **Foreclosure.** Not later than October 1 each year, the Authority shall determine whether any annual assessment installment is not paid when due and shall have the right to order that any such delinquent payment, penalties, interest, and associated costs be collected by a foreclosure action brought in Superior Court that could result in a sale of the Property for the payment of such delinquent assessment installment.
- c. **Interest Rate.** You will be charged a fixed interest rate on your total financed amount. Your interest rate will be set at the time your financing documents are issued. Interest rates may change from the approval date to the date the Notification to Proceed is sent.
- d. **Program Administration Fee.** At the time of closing, the Authority will charge you a one-time administration fee of 4.99% of the principal amount of the assessment on the Property to cover the costs of administering the Program. This fee will be added to the assessment amount.
- e. **Recording Fee.** At the time of closing, the Authority will pass-through the assessment recording fee of approximately \$95.00 to you to cover the costs of recording the assessment. This fee will be added to the assessment amount.
- f. **Assessment Administration Fee.** Each year, an annual assessment administrative fee will be added to the assessment lien amount on your property tax bill. Currently these costs are \$35.00 and there will be adjustments in subsequent years for cost of living increases, not to exceed \$95.00.
- g. **Interest Before First Payment:** Based on the date an assessment is recorded on your Property the payment of assessment installments may not begin until the following year's property tax bill. As a result interest will be added to the assessment amount for the period between your closing date and the date of your first assessment payment. The maximum amount of interest will be listed on your Financing Summary, which will be provided with your financing documents.
- h. **Automated Valuation Model Disclosure.** You have the right to a copy of the automated valuation model (AVM) report used in connection with your application for credit. If you want to obtain a copy, please email or write to us at the address we have provided. We must hear from you no later than 90 days after we provide you with a notice of the action taken on your application or a notice of incompleteness, or in the case of a withdrawn application, 90 days after the withdrawal. An AVM is not an appraisal. It is a computerized property valuation system that is used to derive a real property value.
- i. **Prepayment.** You have the option to pay off your assessment amount at any time in full, or in any amount of at least \$2,500. A prepayment is calculated to include the principal amount of the assessment to be prepaid (Assessment Prepayment Amount) and interest on the Assessment Prepayment Amount to the second business day of the second month following the date the prepayment is made.



- j. **No Endorsement, Warranty or Liability.** The Authority, Renovate America, Inc., and the Program do not endorse any manufacturer, contractor, product, or system, or in any way warranty such equipment, installation, or the efficiency or production capability of any equipment. The Authority, Renovate America, Inc. and the Program make no representations and have no responsibility regarding the equipment and its installation, including the quality, safety, cost savings, efficiency or production capability of any equipment; or any compliance of the equipment or its installation with any applicable laws, regulations, codes, standards or requirements. Further, the Authority, Renovate America, Inc. and the Program shall not be in any way liable for any incidental or consequential damages resulting from the equipment or its installation.
- k. **Validation.** The Program may validate that installed Eligible Products meet Program eligibility requirements including requiring the applicant to provide additional sales receipts, contractor invoices, serial numbers or other identifying details, portions of packages or stickers originally attached to the installed Eligible Products beyond what the Program already requires to be provided. The Program reserves the right to perform independent on-site validation(s) of any Eligible Products financed by the Program even if permit inspections have already been completed. If a validation visit is required, Program staff will schedule any such on-site validation visit with the Property owner, at any reasonable time and with reasonable notice. In addition, the Program reserves the right to perform online monitoring of any installed renewable energy systems' generation data, if applicable, as well the tracking of energy consumption impacts and utility usage for any installed/financed product via property utility bill data. You, by submitting this application, consent to any such onsite validations, online monitoring, and utility bill energy usage analysis. By submitting this application, you also agree to sign the authorization form to participate in utility billing energy usage analysis to measure Program impact savings and participant satisfaction.
- l. **Additional Homeowner Information Disclosure.** Please see the HERO Website Privacy Policy for additional information on disclosure practices.
- m. **Property Transfers, Notice, and Acknowledgement.** To the extent required by applicable law, the Property owner hereby agrees to provide written notice of the obligation to pay the Assessment pursuant to an Assessment Contract to any subsequent purchaser or transferee of the Property or any interest therein, including any subdivision of the Property, at or before the time of sale or transfer of the Property. Property owner understands and acknowledges that the Assessment, and obligation to pay the Assessment pursuant to such Assessment Contract, runs with the land and, upon sale or transfer of the Property or any interest therein, any subsequent owner or transferee shall be required to pay the Assessment pursuant to such Assessment Contract. If a subsequent owner or transferee fails to pay the Assessment pursuant to such Assessment Contract, then the provisions of this Contract, including the "Foreclosure" provision listed above, shall apply to the subsequent owner or transferee's interest in the Property to the extent permitted by law. Property owner further understands and acknowledges that a subsequent purchaser or transferee, or any interested party to the sale or transfer (such as a lender), may require as a condition of sale or transfer, that the Assessment be paid in full prior to sale or transfer. Information regarding Assessment prepayment can be found in the Contract to Pay Assessment; Prepayment section of the Assessment Contract.
2. **Legal Disclosures**
- a. **Equal Credit Opportunity Act (ECOA).** The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against Credit Applicant(s) on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant(s) income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.
- b. **Fair Credit Reporting Act.** As part of assembling your Program application, the Authority has requested a consumer report bearing your credit worthiness, credit standing and credit capacity. This notice is given to you pursuant to the Fair Credit Reporting Act.
- c. **The Housing Financial Discrimination Act Of 1977.** It is illegal to discriminate in the provision of or in the availability of financial assistance because of the consideration of:
- i. trends, characteristics or conditions in the neighborhood or geographic area surrounding a housing accommodation, unless the financial institution can demonstrate in the particular case that such consideration is required to avoid an unsafe and unsound business practice; or
 - ii. race, color, religion, sex, marital status, domestic partnership, national origin or ancestry.
- d. **Patriot Act Disclosure.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: As part of applying to the Program, the Authority may be required to ask for your name, address, date of birth, and other information that will allow it to identify you. The Authority may also need a copy of the driver's license or other identifying documents from any and all borrowers and guarantors.
- e. **Communications with Legal Advisers.** If you have any questions about any agreements or security instruments which affect the Property or to which you are a party, or about your authority to execute the Program Application or enter into an Assessment Contract with the Authority without the prior consent of your existing lender(s), the Program strongly encourages you to consult with your own legal counsel and your lender(s). Program staff cannot provide you with advice about existing agreements or security instruments.
- f. **Monitoring and Recording Telephone Calls.** The Program may monitor or record telephone calls for security and customer service purposes. By applying for HERO Financing, you consent to have any phone conversations with the Program recorded or monitored.




HERO Financing Program™ Application

P: (855) HERO-411 F: (858) 815-6860 E: info@heroprogram.com

A: 15073 Avenue of Science
San Diego, CA 92128

Property Owner Signature(s)

I declare that (i) I have received, read and understand the risks and characteristics of the Program described in the Property Owner Acknowledgments and Disclosures set forth in this Application and (ii) I have been informed that I must take the sole responsibility to satisfy myself that executing the Assessment Contract, receiving financing for Eligible Products, and consenting to the assessment levied against the Property will not constitute a default under any other agreement or security instrument (specifically the terms of any mortgage on the Property) which affects the Property or to which I am a party.

	_____ John Smith	_____ Date	_____ Jane Smith	_____ Date
	_____ Property Owner 3	_____ Date	_____ Property Owner 4	_____ Date



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FOR CONTRACTOR CALL IN ONLY

HERO ID#: RCC12345A

Property Address

Single Family Home

Property Type

Property Address

City

State

Zip Code

Property Owner

Ownership Type: Joint

John

First Name

M. Initial

Smith

Last Name

XXX-XX-XXXX

Social Security Number

XX/XX/XXXX

Birth Date (mm/dd/yyyy)

Home Phone Number

email@email.com

Email Address

Mailing Address

City

State

Zip Code

Property Owner 2

Jane

First Name

M. Initial

Smith

Last Name

XXX-XX-XXXX

Social Security Number

XX/XX/XXXX

Birth Date (mm/dd/yyyy)

Property Owner Signature(s)

I declare that I have the authority, without the consent of any third party which has not been previously obtained, to execute and deliver the Application, Assessment Contract, and the various documents and instruments referenced therein.



John Smith

Date

Jane Smith

Date

Property Owner 3

Date

Property Owner 4

Date

If you do NOT wish to receive email communications from the Program and would prefer all communications to occur through the U.S. mail instead, please contact us.

☐ Please check this box if you do NOT want to receive newsletters or other marketing materials from the Program or Renovate America, Inc.



Federal Housing Finance Agency

Constitution Center
400 7th Street, S.W.
Washington, D.C. 20024
Telephone: (202) 649-3800
Facsimile: (202) 649-1071
www.fhfa.gov

August 20, 2014

Orry P. Korb
County Counsel
Office of County Counsel for County of Santa Clara
70 West Hedding Street,
East Wing, 9th Floor
San Jose, CA 95110-1770

RE: PACE Lending

Dear Mr. Korb:

The Federal Housing Finance Agency has been advised that a number of communities in California, including yours, recently announced plans to move forward with programs to approve Property Assessed Clean Energy (PACE) loans with a first lien on residential properties. Consequently, I am writing to remind you that Fannie Mae and Freddie Mac do not purchase mortgages for either home sales or re-financings that are encumbered with first lien PACE (or similar program) loans. This policy has been in place since 2010 and was reaffirmed by FHFA in 2014. The Federal Home Loan Banks, which also are regulated by FHFA, have been directed to protect their interests in the collateral they accept for advances, which could become subject to PACE encumbrances.

FHFA urges your community to inform potential borrowers of the policies of Fannie Mae and Freddie Mac and to provide them the web addresses that homeowners can utilize to determine whether their loan is currently held or guaranteed by one of the Enterprises. These websites are <https://knowyouroptions.com/loanlookup> for Fannie Mae and for Freddie Mac <https://www3.freddie.mac.com/loanlookup/?intcmp=LLT-HPstep1>.

Thank you for your attention in this matter. If you have any questions, you may contact me directly at 202 649 3050.

With all best wishes, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Alfred M. Pollard". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alfred M. Pollard
General Counsel



Financing Estimate

15073 Avenue of Science, San Diego, CA 92128

Save this Financing Estimate to compare with your Final Payment Summary.

DATE ISSUED**PROPERTY OWNERS****PROPERTY****TERM****PURPOSE****PRODUCT****IDENTIFICATION #****RATE LOCK**☐ NO ☒ YES, until MM/DD/YYYY

After the expiration date interest rates and closing costs can change.

Products and Costs

Product Cost	
Financing Cost	See closing costs details
Prepaid interest	
Other Costs	
Financed Amount	Total amount of the assessment

Terms

	Can this amount increase after closing?	
Financed Amount	NO	Total amount of the assessment
Interest Rate	NO	
Principal, Interest and Other Costs	YES	Annual administrative fee is subject to change
	Does the financing have these features?	
Prepayment Penalty	NO	Interest will be due to the next bond call date
Balloon Payment	NO	

Projected Payments

Payment Calculation**Years 1-10**

Principal & Interest

Annual Administrative Fee

Annual administrative fee is subject to change

Estimated Total**Annual Payment**

Your payment will be added to your property bill for the next XX years. If your project is completed and all your documents are submitted and approved by DATE, your first HERO payment will be included on your DATE tax bill. If your HERO documents are submitted and/or approved after DATE, your first HERO payment will be included on your DATE tax bill. Estimated payment information on this document assumes all documentation is approved on DATE.

Closing Cost Details

Costs at Closing		
Estimated Closing Costs		Includes \$XXX in Financing Costs + \$XX in Other Costs+ \$XXXX in Prepaid Interest. <i>See Calculating Cash to Close summary for details.</i>
Estimated Cash to Close	\$0	<i>See Calculating Cash to Close summary for details.</i>

Financing Costs		Other Costs	
A. Origination Charges	\$000.00	D. Recording and Administrative Fees	\$000.00
Application Fee	\$0	County Recording Fee	\$00.00
Underwriting and Bond Issuance Fee	\$000.00	Program Administrative Fee	\$00.00
B. Services	\$0	Prepaid Interest	
Appraisal Fee	\$0	E. Prepaid Interest (from closing to first payment)	\$000.00
Credit Report Fee	\$0	F. TOTAL CLOSING COSTS (C + D + E)	
Tax Monitoring Fee	\$0	\$000.00	
Tax Status Research Fee	\$0	Calculating Cash to Close	
Title- Title Search Fee	\$0	Total Closing Costs (F)	
C. TOTAL FINANCING COSTS (A + B)	\$000.00	Closing Costs Financed (Paid from Financed Amount) - \$000.00	
		Down Payment/Funds from Borrower	
		Estimated Cash to Close	
		\$0	

Additional Information About This Financing

PACE PROVIDER HERO Program
EMAIL info@heroprogram.com
PHONE (855) HERO-411

Comparisons	Use these measures to compare this financing with other forms of financing.	
In 10 Years	\$ 00000.00	Principal you will have paid off.
	+ \$0000.00	Amount of interest you will have paid.
	+ \$0000.00	Amount of financing and other costs you will have paid.
	= \$00000.00	Total you will have paid in principal, interest, financing and other costs.
Annual Percentage Rate (APR)	0.00%	Your costs over the term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	0.00%	The total amount of interest that you will pay over the term as a percentage of your financing amount.

Other Considerations

Assumption

If you sell or transfer this property to another person, we

- ☒ will allow, this person to assume this financing on the original terms.
☐ will not allow assumption of this financing on the original terms.

I understand, if i refinance my home, my mortgage company may require me to pay off the remaining balance. If i sell my home, the buyer or their mortgage company may require me to payoff the remaining balance.

1 PO INITIAL

Payments

Your payments will be added to your property tax bill. Whether you pay your property taxes through your mortgage payment, using an impound account, or if you pay them directly to the tax collector you need to save an estimated \$2,892.62 for your first payment in November 2016. After your first payment if you pay your property taxes through an impound account your monthly mortgage payment should adjust to cover your increased property tax bill.

1 PO INITIAL

Tax Benefits

Consult your tax advisor regarding tax credits, tax deductibility, and other tax benefits of the HERO Program. You are responsible for submitting appropriate document with your tax return.

1 PO INITIAL

Late Payment

If your tax payment is late you are subject to penalties and late fees established by the tax collector.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this financing because you have signed or received this form.

Property Owner Signature

Date

Property Owner Signature

Date

Property Owner Signature

Date

Property Owner Signature

Date

ATTACHMENT D

WAIVER, RELEASE OF LIABILITY AND INDEMNIFICATION PROVISIONS ASSESSMENT CONTRACT BETWEEN PACE PROVIDER AND PROGRAM PARTICIPANT

1. Waiver of Assessment Proceedings.

Because this Agreement between the PACE Provider and Program Participant reflects the Program Participant's free and willing consent to pay the Assessment, the Program Participant hereby waives any otherwise applicable requirements of Article XIID of the California Constitution or any other provision of California law for an engineer's report, notice, public hearing, protest or ballot. The Program Participant hereby waives the right to repeal the Assessment by initiative or any other action, or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the PACE Provider undertaken in connection with the PACE Program.

2. Responsibility for Eligible Improvements.

The Program Participant hereby agrees that the Program Participant and its successors in interest to fee title in the property shall be solely responsible for the installation, operation and maintenance of the Eligible Improvements. The Program Participant hereby acknowledges that the Program Participant and its successors in interest to fee title in the property will be responsible for payment of the Assessment regardless of whether the Eligible Improvements are properly installed, operated or maintained as expected.

The Program Participant hereby agrees that the PACE Provider is entering into this Agreement solely for the purpose of assisting the Program Participant with the financing of the installation of the Eligible Improvements, and that the PACE Provider, PACE Administrator and the County shall have no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Eligible Improvements.

3. Indemnification Obligation of Program Participant.

To the fullest extent not prohibited by applicable law, the Program Participant shall defend, indemnify, protect, save, and hold harmless the PACE Provider, PACE Administrator, Contra Costa County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively and individually the "Indemnitees") from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (collectively "Liability") arising out of or connected with this Agreement or activities taken by the parties pursuant to this Agreement, the Operating Agreement between the

PACE Provider and Contra Costa County, or the agreement between the PACE Provider and the PACE Administrator, including: (i) any claim, action or proceeding to attack, set aside, void, abrogate, rescind or annul said Agreements or the actions of either party under said Agreements; (ii) the placement or collection of assessments on participating properties; or (iii) the acts, errors or omissions of the Program Participant, its officers, employees, agents, contractors, subcontractors, or any person under its direction or control in connection with this Agreement or the PACE Program; and will make good to and reimburse Indemnitees for any expenditures, including reasonable attorney's fees, the Indemnitees may make by reason of such matters. If requested by any of the Indemnitees, the Program Participant will defend any such suits at the sole cost and expense of Program Participant with counsel selected or approved by the affected Indemnitees.

The Program Participant's obligations under this section will exist regardless of concurrent negligence or willful misconduct on the part of any Indemnatee or any other person; provided, however, that the Program Participant will not be required to indemnify any Indemnatee for the proportion of Liability a court determines is attributable to the sole negligence or willful misconduct of that Indemnatee. This indemnification clause shall survive the termination or expiration of this Agreement.

4. Release.

To the fullest extent not prohibited by law, the Program Participant hereby releases and forever discharges the PACE Provider, PACE Administrator, Contra Costa County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively "Released Parties") from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (including without limitation, attorneys' fees and expenses), which the Program Participant now has or could assert in any manner arising out of or connected with the subject matter of this Agreement, the Operating Agreement between the PACE Provider and Contra Costa County, or the agreement between the PACE Provider and the PACE Administrator, or activities taken by the Released Parties pursuant to said Agreements, including any claim, action or proceeding to attack, set aside, void, abrogate, rescind or annul said Agreements or the placement or collection of assessments on participating properties. The Program Participant knowingly waives the right to make any claim against the Released Parties for such damages and expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

The waivers, releases and agreements set forth in this document shall survive termination of the Agreement.