

**INDEMNIFICATION AND INSURANCE AGREEMENT
BY AND BETWEEN
COUNTY of CONTRA COSTA
AND
PACE FUNDING GROUP LLC**

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the County of Contra Costa, a political subdivision of the State of California ("County"), and PACE Funding Group LLC, a California limited liability company the administrator of the California Statewide Communities Development Authority's Property Assessed Clean Energy Program (the "PACE Administrator"), which is a Program of the California Statewide Communities Development Authority (CSCDA) Open PACE Program, a California joint exercise of powers authority (the "Authority").

RECITALS

WHEREAS, the California Statewide Communities Development Authority (CSCDA) ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the California Government Code; and

WHEREAS, the Authority established the CSCDA Open PACE 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 participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

WHEREAS, the Authority is responsible for the formation, operation and administration of the PACE Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the PACE Program; and

WHEREAS, the Authority has entered into a separate operating agreement with the County authorizing it to offer and provide the PACE Program in Contra Costa County; and

WHEREAS, the PACE Administrator is an independent contractor of the Authority that markets, administers, and carries out the PACE Program in Contra Costa County on behalf of the Authority.

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

1. Agreement to Indemnify. To the fullest extent not prohibited by applicable law, the PACE Administrator 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 and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the PACE Program. If requested by any of the Indemnitees, the PACE Administrator will defend any such suits at the sole cost and expense of the PACE Administrator with counsel approved by the Contra Costa County Counsel; provided, that if the Indemnitee does not request the PACE Administrator to defend such suit, then the Indemnitee shall consult with the PACE Administrator regarding the conduct of the defense and shall keep the PACE Administrator apprised of important developments related to the claim. The PACE Administrator'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 Administrator 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 indemnity shall apply to all claims and liability regardless of whether any insurance policies of the PACE Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the PACE Administrator, its affiliates or other parties are not a limitation upon the obligation of the PACE Administrator including without limitation the amount of indemnification to be provided by the PACE Administrator. This indemnification clause shall survive the termination or expiration of this Agreement.

2. Insurance. The PACE Administrator shall, at no cost or expense to the County and at all times during the operation of the PACE Program, maintain the insurance coverage set forth in Exhibit A to this Agreement.

3. Amendment/Interpretation of this Agreement. This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

4. Section Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

5. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement is sought,

and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

6. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

7. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the PACE Administrator

PACE Funding Group LLC
750 University Ave, Ste 240
Los Gatos, CA 95302

If to the County:

County of Contra Costa
Attn: Jason Crapo, Deputy Director
Dept. of Conservation and Development
30 Muir Rd.
Martinez, CA 94553

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

9. Successors and Assigns. This Agreement shall apply to, bind and inure to the benefit of successors in interest of the parties hereto, including heirs, assigns, executors, administrators and all other parties, whether they succeed by operation of law or voluntary acts.

10. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

11. Effective Date. This Agreement will be effective as of the date of the signature of County's representative as indicated below in the County's signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

“County”

County of Contra Costa, a political
subdivision of the State of California

By _____

Date: _____

“PACE Administrator”

PACE Funding Group LLC

By  _____

Name: Robert Giles

Title: CEO

Date: 7/10/14

EXHIBIT A
INSURANCE

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the County's Risk Manager.

B. Minimum Limits of Insurance

PACE Administrator shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

PACE Administrator shall maintain the following deductibles on its insurance policies:

- Property: \$2,500
- General Liability: \$0
- Professional Liability: \$250,000

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. County of Contra Costa, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, PACE Administrator; products and completed operations of PACE Administrator; premises owned, leased or used by PACE Administrator; and automobiles owned, leased, hired or borrowed by PACE Administrator. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, employees, agents and contractors.
 - b. PACE Administrator's insurance coverage shall be primary insurance as respects County, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by County, its officers, employees, agents or contractors shall be excess of PACE Administrator's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by PACE Administrator shall not affect coverage provided County, its officers, employees, agents, or contractors.
 - d. Coverage shall state that PACE Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the County, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of County of Contra Costa, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to County, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium; provided, that if such endorsement is not commercially available, PACE Administrator agrees to provide County such notice.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to County's Risk Manager.

F. Verification of Coverage

PACE Administrator shall furnish County with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: jason.crapo@dcd.cccounty.us, or mailed to the following postal address or any subsequent address as may be directed in writing by the County Department of Conservation and Development:

County of Contra Costa
Jason Crapo, Deputy Director
Department of Conservation and Development
30 Muir Rd.
Martinez, CA 94553

G. Subcontractors

PACE Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.