

**INTERGOVERNMENTAL COMMERCIAL PROPERTY ASSESSED CLEAN
ENERGY AGREEMENT**

**THIS INTERGOVERNMENTAL COMMERCIAL PROPERTY
ASSESSED CLEAN ENERGY (“C-PACE”) AGREEMENT** (the “Agreement”) is dated as of October 22nd, 2019 (the “Contract Effective Date”) by and between THE CITY OF PHILADELPHIA (“City”) acting through its Office of the Director of Finance, and THE PHILADELPHIA ENERGY AUTHORITY, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (“Authority” or “PEA”).

RECITALS

WHEREAS, the Authority is a body corporate and politic organized under the provisions of the Municipalities Authorities Act of 2001 (the Act of June 19, 2001, P.L. 287, No. 22, as amended) pursuant to ordinances of the Council of the City; and

WHEREAS, the Authority is authorized by an Ordinance approved on July 29, 2010 (Bill No. 100163-AA) to take actions concerning the development or facilitation of energy efficiency projects on behalf of the City, government agencies, institutions, and businesses; and

WHEREAS, the Commonwealth of Pennsylvania enacted legislation, Chapter 43 of Title 12 of the Pennsylvania Consolidated Statutes, 12 Pa. C.S. §4301-4310, (the “Enabling Legislation”) which authorized counties and municipalities to establish a property assessed clean energy program; and

WHEREAS, the Council of the City of Philadelphia enacted an ordinance, Bill No. 190412, approved by the Mayor on August 14, 2019, attached as **Exhibit “A”**, duly empowering the City to establish a Commercial Property Assessed Clean Energy program (the “C-PACE Program”) for the financing of clean energy, alternative energy, energy efficiency, and water conservation projects, and establishing the Authority as the Administrator under the program; and

WHEREAS, pursuant to the ordinance, the City will enter into a Statement of Levy and Lien Assessment Agreement in the form attached as **Exhibit “B”** (or a successor form agreed upon by the City and Authority, each a “C-PACE Statement of Levy and Lien”) between the City, the Program Administrator, and each borrower and its respective lender under the C-PACE Program to establish a levy and lien on the borrower’s property to secure the repayments required to be made by the borrower to the lender; and

WHEREAS, by resolution number 100318-01, the Board of Directors of the Authority has authorized its Executive Director to, among other things, execute this

Agreement and take responsibility for administering the C-PACE Program within the City; and

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and for other valuable consideration, the City and the Authority (collectively, the “Parties”, and individually a “Party”), intending to be legally bound, hereby agree as follows:

1. Definitions.

Capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in the Enabling Legislation.

2. Term.

The initial term of this Agreement shall commence on the Contract Effective Date and shall end thirty (30) years from the Contract Effective Date. At the conclusion of each one (1) year period of the initial term an additional one (1) year shall be added to the end of the term so that at no point will the term of this Agreement be less than thirty (30) years, unless sooner terminated pursuant to this Agreement; provided that to the extent that any obligations of the Authority under the C-PACE Program survive termination of this Agreement, the City’s corresponding obligations under this Agreement shall remain in effect and be enforceable following such expiration or termination. Either party can terminate this Agreement upon one hundred (180) days written notice.

3. Obligations of the Authority.

(a) Authority shall be the Administrator of the C-PACE Program within the City of Philadelphia and be responsible for program design, pre-qualification of capital providers, verification of project and property eligibility and compliance, program marketing, and recordation of the C-PACE Statements of Levy and Lien and notices of satisfaction.

(b) The Authority shall bill participating property owners for the required assessment payments and collect assessment payments in a manner similar to the City’s collection of property taxes. The Authority shall also distribute assessment payment funds to the capital providers.

(d) The Authority shall be responsible for the filing of liens in the Philadelphia Court of Common Pleas for any missed assessment payments by a property owner participating in the C-PACE Program. Also, the Authority shall file the necessary documents to satisfy liens that have been placed on property once the delinquent funds have been received.

(e) In the event of a proceeding to force payment of a lien associated with the C-PACE Program, such as a foreclosure event or sheriff sale, the Authority shall be responsible for all enforcement actions, to be carried out in accordance with the C-PACE Statements of

Levy and Lien, Bill No, 190412, the Enabling Legislation, and any other applicable law.

(f) The Authority shall take all steps necessary to perform its obligations as Administrator in accordance with the Enabling Legislation and City Bill No. 190412. The Authority is authorized and agrees to undertake all of its obligations as Program Administrator under each C-PACE Statement of Levy and Lien.

(g) The Authority shall not assign this Agreement once fully executed or designate other Administrators of the C-PACE Program, without the prior written consent of the City. The Authority may contract for any professional services necessary or prudent to operate the C-PACE program.

4. Obligations of the City

(a) After the Authority has approved a project for participation in the C-PACE Program and presented the necessary documents to the City, the City shall execute a Statement of Levy and Lien of Assessment Agreement between the City, the Authority, and a property owner and capital provider, in a timely manner. The City hereby assigns its rights under each C-PACE Statement of Levy and Lien to the Authority to the full extent necessary for the Authority to enforce the assessment and lien created by such Statement of Levy and Lien as contemplated by this Agreement and such C-PACE Statement of Levy and Lien.

(b) City shall perform all other municipal functions, not designated to the Authority under this Agreement or City Bill No. 190412, necessary for performance of the C-PACE Program, including, without limitation, its obligations under each C-PACE Statement of Levy and Lien.

5. Indemnification.

Subject to the provisions and limitations of this Section, the Authority hereby indemnifies and holds harmless, and shall cause any contractors hired for the C-PACE program by the Authority to indemnify and hold harmless, the City and each member, officer, and employee of the City against any and all claims, losses, damages or liabilities, joint and several, to which the City or any member, officer or employee of the City may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise wholly or in part by the Authority's act, omission, negligence or fault, or the act, omission, negligence or fault of Authority's contractors in connection with the C-PACE Program, unless the losses, damages or liabilities arise from an adjudication of bad faith, fraud or deceit of the member, officer or employee of the City. In the event any claim is made or action brought against the City, or any member, officer, or employee of the City, the City may request that the Authority assume the defense of the claim and any action brought thereon and pay all reasonable expenses (including all reasonable attorney fees) incurred therein; or the City may assume the defense of any such claim or action. The defense of any such claim shall include the taking of all actions necessary or

appropriate thereto. The Authority's obligations to indemnify and defend the City shall only take effect in the event the City is not already indemnified by a third party in relation to the C-PACE Program.

6. Successor Authority.

In the event that the Authority ceases to exist or otherwise does not perform its obligations hereunder, or the City chooses to name another entity the Administrator of the C-PACE Program, the City shall have the right to appoint and substitute a successor authority (the "Successor Authority") to succeed to the rights and assume the obligations of the Authority hereunder. The City's right to appoint a Successor Authority shall be a continuing right and shall not be exhausted by the exercise thereof.

7. Pennsylvania Property Assessed Clean Energy Program.

The Parties acknowledge and agree that their entering into this Agreement is in accordance with the Enabling Legislation and that all obligations taken on by the authority as Administrator of the C-PACE program meet the standards as set forth in the Enabling Legislation.

8. Tort Claims Act.

Nothing in this Agreement shall waive or be construed to waive or amend, or be deemed to waive or amend, any immunity which the City or the Authority, or their officials, members, officers, agents, employees or representatives, may have under Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes Annotated, as applicable, or other applicable law.

9. Representations and Warranties of Authority.

The Authority represents and warrants that:

- (a) The Authority is a body corporate and politic, validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform the obligations under this Agreement.
- (b) The Authority has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority.
- (c) Neither the execution nor the delivery by the Authority of this Agreement nor the performance by the Authority of its obligations hereunder nor the consummation by the Authority of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any applicable law in effect on the date as of which this representation is being made or (2) conflicts with, violates or results in a breach of any term or condition

of any judgment, decree, agreement or instrument to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

(d) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the Authority's best knowledge, threatened against the Authority which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of the C-PACE Program or any other agreement or instrument entered into by the Authority in connection with the C-PACE program contemplated hereby.

10. Representations and Warranties of the City.

The City hereby represents and warrants that:

(a) The City is a body corporate and politic validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The City has duly authorized the execution and delivery of this Agreement and the taking of any and all actions as may be required on its part to carry out and to give effect and to consummate the transactions contemplated by this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms.

(c) Neither the execution nor the delivery by it of this Agreement, nor its performance of its obligations in connection with the transactions contemplated hereby nor its fulfillment of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any applicable laws, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which City is a party or by which City or any of its properties or assets are bound, or constitutes a default thereunder.

(d) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the City's best knowledge, threatened against the City having a material adverse effect on the right of the City to execute this Agreement or its ability to comply with its obligations under this Agreement.

(e) The City has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the City of this Agreement and the transactions contemplated hereby.

11. Effect of City Approval

Review, approval or acceptance by either Party of any documents submitted by the other Party under or in connection with the Agreement or the C-PACE Program shall not constitute approval otherwise required under applicable law by any and all City departments, boards or commissioner, or by any other federal, state, or local governmental authority having jurisdiction.

12. No Merger.

The rights and obligations of the Parties under this Agreement shall remain in effect and shall not merge, even if the same Party holds rights of both Parties hereunder, unless such Party terminates this Agreement in writing.

13. Severability.

In the event that any of the provisions, or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

14. Notice.

Any notice required to be given by City to the Authority hereunder shall be in writing and shall be addressed to:

The Philadelphia Energy Authority
City Hall, Room 566
1400 JFK Boulevard
Philadelphia, PA 19107
Attention: Executive Director

Any notice required to be given by the Authority to the City hereunder shall be in writing and shall be addressed to:

City of Philadelphia
Office of the Director of Finance
1401 JFK Blvd, Room 1330
Philadelphia, PA 19102
Attention: Director of Finance

with a copy to:

City of Philadelphia Law Department
1401 JFK Blvd, Suite 580
Philadelphia, PA 19102
Attention: Chief Revenue Counsel

All notices under this Section shall be delivered in person, sent via certified mail with a return receipt requested or sent via facsimile and shall be effective when received at the address specified above. The Parties hereto, by like notice in writing, may designate, from time to time, another address or facsimile number to which notices may be given pursuant to this Agreement.

15. Entire Agreement.

This Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior written and oral agreements, proposals, negotiations, understandings and representations pertaining to the subject matter hereof.

16. Amendments.

The parties acknowledge that from time to time the Agreement may require amendments to support the Parties interests and obligations under the C-PACE Program. Such requests for amendment from either Party shall not be unreasonably denied or delayed. However, no amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of the Party against which enforcement is sought.

17. No Third-Party Rights.

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:
Marcel Pratt, City Solicitor

By: 


Kevin Birriel
Deputy City Solicitor

CITY OF PHILADELPHIA, acting
through its Office of the Director of
Finance

By: 

Rob Dubow
Finance Director

**PHILADELPHIA ENERGY
AUTHORITY**

By: 

Emily Schapira
Executive Director

Exhibit A

Philadelphia C-PACE Ordinance

Exhibit B

Statement of Levy and Lien Assessment Agreement