

INTERGOVERNMENTAL C-PACE AGREEMENT AMENDMENT

THIS INTERGOVERNMENTAL C-PACE AGREEMENT AMENDMENT (the “Amendment”) is dated as of September 27, 2022 (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 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 empowering the City to establish a Commercial Property Assessed Clean Energy program (the “C-PACE Program”; and

WHEREAS, the City and the Authority entered into an Intergovernmental Commercial Property Assessed Clean Energy Agreement dated October 22, 2019 (the “C-PACE Agreement”) in order for the Authority to act as Administrator of the C-PACE Program; and

WHEREAS, the Commonwealth of Pennsylvania has amended the Enabling Legislation to expand on the types of projects which may qualify under the program as well as the qualifying property; and

WHEREAS, the Council of the City of Philadelphia enacted an ordinance, Bill No. 220293, approved by the Mayor on September 13, 2022, attached as **Exhibit “A”**, amending portions of Bill No. 190412 to allow for the financing of clean energy projects, resiliency improvement projects, indoor air quality projects, water conservation projects, and alternative energy projects; and

WHEREAS, the City and the Authority desire to amend the C-PACE Agreement in order to comply with the legislation enacted by the Commonwealth and 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 Amendment shall have the meanings ascribed to them in the C-PACE Agreement or the Enabling Legislation.

2. C-PACE Agreement Obligations of the Authority. Section 3(e) and (f) “Obligations of the Authority” of the C-PACE Agreement are amended as follows:

“(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, *Bill No. 220293*, 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, *and City Bill No. 220293*. The Authority is authorized and agrees to undertake all of its obligations as Program Administrator under each C-PACE Statement of Levy and Lien.”

3. C-PACE Agreement Obligations of the City. Section 4(b) “Obligations of the City” of the C-PACE Agreement is amended as follows:

“(b) City shall perform all other municipal functions, not designated to the Authority under this Agreement, ~~or~~ City Bill No. 190412, *or City Bill No. 220293*, necessary for performance of the C-PACE Program, including, without limitation, its obligations under each C-PACE Statement of Levy and Lien.”

4. C-PACE Agreement.

All term and conditions of the C-PACE Agreement which have not been amended or changed by this Amendment remain in full force and effect. Should there be any conflict between the C-PACE Agreement and this Amendment the terms of this Amendment shall control

[Signature pages follow]

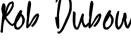
IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first above written.

APPROVED AS TO FORM:
Diana P. Cortes, City Solicitor

By: 
DocuSigned by:
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Kevin Birriel
Deputy City Solicitor

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

By: 
DocuSigned by:
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Rob Dubow
Finance Director

**PHILADELPHIA ENERGY
AUTHORITY**

By: 
DocuSigned by:
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Emily Schapira
President & CEO

Exhibit A

City of Philadelphia



(Bill No. 220293)

AN ORDINANCE

Amending Bill No. 190412, entitled “An Ordinance approving City participation in the Commonwealth's Property Assessed Clean Energy Program, all under certain terms and conditions,” to modify the C-PACE program in conformity with Commonwealth legislation and to make other conforming changes, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 3 of Bill No. 190412 (adopted September 14, 2019) is hereby amended as follows (matter added by amendment is in **bold**; matter deleted by amendment is in ~~strikeout~~):

Section 3. Pursuant to the terms of the C-PACE Program, only qualified projects, meaning clean energy projects, **resiliency improvement projects, indoor air quality projects**, water conservation projects, or alternative energy systems (including those alternative energy systems that are affixed to the land or a building) requiring installation or modification of a permanent improvement to **multi-family housing with five or more units (owned by an individual, partnership, limited liability corporation, corporation, or nonprofit), mixed-use property with no fewer than five residential units**, agricultural, commercial or industrial ~~real~~ property shall be eligible for the program.

SECTION 2. Sections 7 and 8 of Bill No. 190412 (adopted September 14, 2019) is hereby amended as follows (matter added by amendment is in **bold**; matter deleted by amendment is in ~~strikeout~~):

Section 7. Such assessments are secured by a first and prior lien against the ~~real~~ **qualifying commercial** property on which the assessment is imposed from the date on which the notice of the contractual assessment is recorded and until the assessment, interest, or penalty is satisfied. Such lien shall have the same priority status as a City tax or claim; shall run with the land; **notwithstanding any other provision of law**, shall not be accelerated or extinguished until fully repaid; and ~~may be enforced in the same manner as delinquent property tax obligations.~~ **shall be enforced under the act of July 7, 1947 (P.L.1368, No. 542), known as the Real Estate Tax Sale Law, or the act of May 16, 1923 (P.L.207, No. 153), referred to as the Municipal Claim and Tax Lien Law, to collect delinquent installments of assessments.**

The written agreement between the property owner, the City and the financial institution shall include, in language determined by the City, a requirement that in the event of a proceeding to force payment on a lien against such property, such as a foreclosure action

City of Philadelphia

BILL NO. 220293 *continued*

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or Sheriff's sale, the financial institution shall be required to make the City whole for any shortfall on payment on any City liens based on any type of City claim, including tax claims, PGW, Water and demolition liens or any other similar liens, up to the full amount of payment of the lien based on any such assessment.

Section 8. Before ~~real~~ **qualifying commercial** property may be subject to an assessment under the program and before origination of financing, any financial institution holding a lien, mortgage or security interest in or other encumbrance of the ~~real~~ **qualifying commercial** property that secures a current, future or contingent payment obligation must: be given written notice of the ~~real~~ property owner's intention to participate in the program; acknowledge in writing to the property owner and the City that they have received such notice; and provide written consent to the property owner and the City that the property may be used in connection with the program.

SECTION 3. Section 11 of Bill No. 190412 (adopted September 14, 2019) is hereby amended as follows (matter added by amendment is in **bold**; matter deleted by amendment is in ~~strikeout~~):

Section 11. No ~~real~~ **qualifying commercial** property may be subject to an assessment under the program and no origination of financing shall be commenced or renewed if the property owner is delinquent in the payment of any City or School District of Philadelphia taxes, charges, fees, rents or claims, or any penalties or fines related to the property owner's business for which the property owner is responsible, unless the property owner has entered into an agreement to pay any such delinquency and is abiding by the terms of such agreement. Proof of compliance by submission of a Tax Clearance Certificate as defined in Section 9-101 of The Philadelphia Code shall be required prior to the origination of any financing.

SECTION 4. This Ordinance shall become effective on the effective date of Commonwealth legislation amending Chapter 43 of Title 12 of the Pennsylvania Consolidated Statutes, entitled "Property Assessed Clean Energy Program," to change the term "real property" to "qualifying commercial property."

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BILL NO. 220293 continued

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BILL NO. 220293 continued

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 23, 2022. The Bill was Signed by the Mayor on September 13, 2022.



Michael A. Decker
Chief Clerk of the City Council

Certificate Of Completion

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Status: Completed

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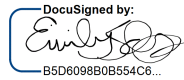
Signer Events

Emily Schapira

eschapira@philaenergy.org

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Signature

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Kevin Birriel

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Deputy City Solicitor

City of Philadelphia

Security Level: Email, Account Authentication (None)

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Rob Dubow

rob.dubow@phila.gov

Finance Director

Security Level: Email, Account Authentication (None)

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Agent Delivery Events

Status

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Intermediary Delivery Events

Status

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Certified Delivery Events

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Notary Events	Signature	Timestamp
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Electronic Record and Signature Disclosure

This Electronic Records and Signature Disclosure is provided by the City of Philadelphia in connection with a pending electronic transaction. Any party proceeding with such electronic transaction is deemed to have consented i) to conduct the transaction by electronic means; and ii) where execution of an agreement is required, to the use of electronic signatures using the method provided in the agreement. Questions regarding this Electronic Records and Signature Disclosure should be addressed to econtractphilly@phila.gov.