

**PARTICIPATION AGREEMENT FOR THE CALIFORNIA STATEWIDE  
COMMUNITIES DEVELOPMENT AUTHORITY PROPERTY ASSESSED CLEAN  
ENERGY OPEN PACE PROGRAM**

This agreement ("Agreement"), dated as of \_\_\_\_\_, 2018 ("Effective Date") is by and between the County of Santa Barbara, (the County), and the California Statewide Communities Development Authority (CSCDA) as joint powers authority administering a Property Assessed Clean Energy (PACE) financing program.

**RECITALS**

**WHEREAS**, on **March 13, 2018** the Santa Barbara County Board of Supervisors adopted a resolution stating its desire to participate in the CSCDA Open PACE program within the unincorporated territory of the County for commercial PACE only; and

**WHEREAS**, CSCDA will independently engage the County's Auditor-Controller for administration of commercial PACE property tax voluntary contractual assessments or special taxes to be collected by the County at the same time and manner as other secured property taxes.

**WHEREAS**, CSCDA will share project information and data with the County in the electronic format provided by CSCDA on a quarterly basis or upon request within ten (10) business days based upon the terms and conditions as outlined below; and

**WHEREAS**, this Agreement does not include any financial arrangements between the CSCDA and the County, nor does it preclude any separate contracts for services or support; and

**WHEREAS**, the purpose of this Agreement is to set forth the mutual understandings, terms and conditions related to the CSCDA Open PACE program within the unincorporated territory of the County for commercial PACE only.

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

**1. Recitals.**

The parties agree and affirm that the recitals set forth hereinabove are true and correct.

**2. Definitions.**

- 2.1. "Administrator" is an independent program administrator authorized by CSCDA to administer the Open PACE program.
- 2.2. "DBO" is the California Department of Business Oversight.

- 2.3. **“Eligible Improvement”** is a technology, product or tool for which PACE Financing is authorized. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure improvements that will be permanently fixed to real property.
- 2.4. **“Open PACE”** is the CSCDA program selected by the County to provide PACE financing within the unincorporated areas of the County for commercial PACE only.
- 2.5. **“Property Assessed Clean Energy (PACE) Financing”** is a means of financing distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California Legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through voluntary contractual assessments or special taxes.
- 2.6 **“Commercial Properties”** are any real property other than residential property consisting of 4 units or less pursuant to Chapter 29.1 of Streets and Highways Section 5900.

### **3. Scope of Work / Collaboration.**

- 3.1. CSCDA’s Specified Services. CSCDA, through the Administrators, will offer and provide PACE Financing to owners of commercial property that is within the unincorporated territory of the County allowing these owners of commercial property to voluntarily contract to place assessments or special taxes on their tax bill.
- 3.2. Cooperation with the County. CSCDA shall cooperate with County staff in the performance of all work hereunder.
- 3.3. Property Owner Recourse. PACE Administrators are regulated by the DBO and the County hereby acknowledges that owners of commercial property commercial property that is within the unincorporated territory of the County should file a complaint for redress with the DBO where these owners of commercial property believe they have been subject to unlawful, unfair or fraudulent business practices.
- 3.4. Administrator Registration. CSCDA shall require each Administrator to be registered with the DBO, as required by applicable law, and in the event that CSCDA receives notice of a materially adverse enforcement action by the DBO against an Administrator, shall not permit such Administrator to provide commercial PACE Financing in the unincorporated territory of the County.

### **4. Financing Provision Requirements.**

CSCDA shall require its Administrators to:

- 4.1. Provide to the applicant, specific to the requested amount of the financing, a summary of financing details including assessment amount and terms, financing installments

and estimated fees and administrative expenses as required by state laws and/or federal laws.

**5. Documents, Data, and Information Policies.**

CSCDA will through its Administrators:

- 5.1. Retain Notice of Assessment and Payment of Contractual Assessment Required documents with CSCDA signatures (hardcopy or electronic) on file for duration of assessment.
- 5.2. Provide quarterly reports and any requested reports by the County within ten business days that includes the following:
  - (1) The number of PACE assessments funded in the County.
  - (2) The aggregate dollar amount of PACE assessments funded in the County.
  - (3) The average dollar amount of PACE assessments funded in the County.
  - (4) The number and percentage of Eligible Improvement projects completed by category, specifically energy efficiency, renewable energy, water efficiency and electric vehicle charging in the County.
  - (5) The dollar amount and percentage of Eligible Improvement projects completed by category, specifically energy efficiency, renewable energy, water efficiency and electric vehicle charging in the County.
  - (6) For energy efficiency Eligible Improvement projects, the estimated average, median and total kilowatt-hours, therms and dollars saved. In addition, the report shall state the total number of energy savings improvements, and number of improvements installed that are qualified for the Energy Star program of the United States Environmental Protection Agency, including the overall average efficiency rating of installed units for each product type.
  - (7) For renewable energy Eligible Improvement projects, the average, median and total installed capacity (in kilowatts) and the estimated average and total kilowatt-hours generated and dollars saved.
  - (8) For water efficiency Eligible Improvement projects, the estimated average, median and total gallons and dollars saved. In addition, the report shall state the total number of water savings improvements, the number of efficiency improvements that are qualified for the WaterSense program of the United States Environmental Protection Agency, including the overall average efficiency rating of installed units for each product type.
  - (9) For electric vehicle charging Eligible Improvement projects, the estimated average, median and total gallons of gasoline and dollars saved.
  - (10) The estimated amount of greenhouse gas emissions reductions.
  - (11) The estimated number of jobs created.
  - (12) For each delinquent assessment:
    - (A) The total delinquent amount.

- (B) The number and dates of missed payments.
- (13) For each defaulted assessment:
  - (A) The total defaulted amount.
  - (B) The number and dates of missed payments.
  - (C) The percentage the defaults represent of the total assessments within the County.
  - (D) The total number of parcels defaulted and the number of years in default for each property.
- (14) All reports submitted pursuant to this section shall include data for the current reporting period, the current calendar year to date and in aggregate since PACE projects became eligible in the County.
- (15) All reports submitted pursuant to this section shall include data for Eligible Improvement projects completed in the unincorporated parts of the County and the County inclusive of the unincorporated parts and incorporated cities.
- (16) All reports submitted pursuant to this section shall include only aggregate data, and shall not include any nonpublic personal information.

**6. Branding / Marketing Requirements.**

CSCDA and its Administrators, enrolled contractors and agents will, in all forms (written, verbal, etc):

- 6.1. Represent the role of the County as the local neutral third party public service agency.
- 6.2. Not use the County's logo or name as an endorsement of Open PACE or PACE offered to property owners of commercial property that is within the unincorporated territory of the County.

**7. Term of Agreement.** The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 8, Termination below.

**8. Termination.**

- 8.1. Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, the County or CSCDA shall have the right, in their sole discretion, to terminate this Agreement by giving 90 days written notice to the other Party of this Agreement.
- 8.2. Termination for Cause. Notwithstanding any other provision of this Agreement, should CSCDA fail to uphold any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, the County may immediately terminate this Agreement by giving CSCDA written notice of such termination, stating the reason for termination.
- 8.3. Effect of Termination. In the event of termination pursuant to this Section 8, CSCDA shall:

- 8.3.1. Not enter into new voluntary assessment or special tax contracts with owners of commercial property that is within the unincorporated territory of the County as of the date of the termination. CSCDA may process and fund any applications submitted prior to the date of termination. CSCDA may continue to request the collection of voluntary contractual assessments or special taxes with the County per the terms and conditions in the AGREEMENT FOR COLLECTION OF SPECIAL TAXES and SPECIAL ASSESSMENTS noted for voluntary assessment or special tax contracts entered into with owners of commercial property that is within the unincorporated territory of the County prior to such date of termination.
- 8.3.2. CSCDA may continue to annually submit for collection and otherwise abide by the terms and conditions of the AGREEMENT FOR COLLECTION OF SPECIAL TAXES and SPECIAL ASSESSMENTS for outstanding voluntary contractual assessments or special taxes remaining to be collected for contracts entered into with owners of commercial property that is within the unincorporated territory of the County prior to such date of termination.

**9. Commencement of Work.** The execution of this Agreement shall constitute CSCDA's authority to proceed immediately with the performance of this Agreement. However no voluntary assessment or special tax contracts can be entered into with owners of commercial property that is within the unincorporated territory of the County until the AGREEMENT FOR COLLECTION OF SPECIAL TAXES and SPECIAL ASSESSMENTS between the County and CSCDA has been executed and a copy delivered to the County.

**10. Representations of CSCDA.**

- 10.1 Conflict of Interest. CSCDA covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. CSCDA further covenants that in the performance of this Agreement no person having any such interests shall be employed.
- 10.2 Statutory Compliance. CSCDA agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.
- 10.3 Indemnification. CSCDA agrees to and shall defend, indemnify and save harmless the County and, its officials, officers, agents and employees ("Indemnified Parties'.) from any and all claims, demands, liabilities, costs, expenses, damages, causes of action, and judgments, in any manner arising out of, related to, or in connection with any of the CSCDA's responsibility under this Agreement or duty provided or required by law, or other action taken or omission to act by the CSCDA in establishing a special tax, fee, or

assessment and implementing collection of special taxes, fees, or assessments as contemplated in this Agreement, except for any claims, demands, liabilities, costs, expenses, damages, causes of action, and judgments caused by the sole negligence or willful misconduct of an Indemnified Party.

- 10.4 **Insurance.** CSCDA shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement and provide evidence of insurance as follows:

Commercial General Liability (CGL): covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. CSCDA shall furnish the County with an endorsement naming the County as an additional insured on the policy.

11. **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.

12. **Method and Place of Giving Notice.** All notices shall be made in writing and shall be given electronically and by regular mail. Notices shall be addressed as follows:

TO: Energy and Sustainability Initiatives Division  
c/o Ashley Watkins  
123 E. Anapamu St., 2<sup>nd</sup> Floor Ste 233  
Santa Barbara, CA 93101  
awatkins@co.santa-barbara.ca.us

CSCDA  
c/o James Hamill  
1100 K Street  
Sacramento, CA 95814  
jhamill@cscda.org

13. **Miscellaneous Provisions.**

- 13.1 **No Waiver of Breach.** The waiver by the County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 13.2 **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be

- invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- 13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in County of Santa Barbara.
- 13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

IN WITNESS WHEREOF, the parties have executed this contract to be executed by their duly authorized representations.

ATTEST:  
MONA MIYASATO  
CLERK OF THE BOARD

COUNTY OF SANTA BARBARA:

By: \_\_\_\_\_  
Deputy Clerk


By: \_\_\_\_\_  
Das Williams  
Chair, Board of Supervisors

APPROVED AS TO ACCOUNTING FORM:  
THEODORE A. FALLATI, CPA  
AUDITOR-CONTROLLER

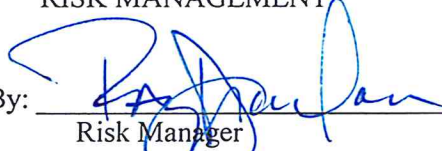
By:   
Deputy Auditor- Controller

By:   
Department Head

APPROVED AS TO FORM:  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By:   
Deputy County Counsel

APPROVE AS TO FORM:  
RAY AROMATORIO, ARM AIC  
RISK MANAGEMENT

By:   
Risk Manager



California Statewide Communities  
Development Authority

  
Signature

James Hamill  
Type or Print Name

Managing Director  
Title

1100 K Street, Suite 100 Sacramento  
Address

Sacramento	CA	95814
County	State	Zip

925-476-5644  
Telephone Number