

INTRODUCED: May 8, 2023

AN ORDINANCE No. 2023-152

As Amended

To repeal City Code §§ 11-190—197, concerning a commercial property assessed clean energy financing program, and to amend ch. 11, art. VIII of the City Code by adding therein new §§ 11-190.1—11-197.1, concerning a commercial property assessed clean energy financing program, for the purpose of aligning the City Code with state law pertaining to commercial property assessed clean energy financing programs.

Patrons – Mayor Stoney and Vice President Nye

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JUN 12 2023 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 11-190 through 11-197 of the Code of the City of Richmond (2020) be and hereby are **repealed** as follows:

~~[Sec. 11-190. Commercial property assessed clean energy financing program; established; purpose.]~~

~~(a) — There is hereby established the commercial property assessed clean energy financing program in accordance with Code of Virginia, § 15.2-958.3. Pursuant to this article, the City may authorize contracts to provide loans for the initial acquisition and installation of clean~~

AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: SEP 11 2023 REJECTED: _____ STRICKEN: _____

~~energy improvements with free and willing property owners of both existing properties and new construction. In addition, private lending institutions shall be provided the opportunity to participate in such contracts.~~

~~(b) — The purpose of the program for which this article provides is to promote the renovation and construction of commercial, nonprofit and multifamily buildings and structures by incorporating renewable energy production and distribution facilities, energy usage efficiency improvements, or water usage efficiency improvements. The City finds that this will promote the general health and welfare of the community. Water usage efficiency improvements, in particular, benefit the public water supply and wastewater treatment services provided by the City.~~

~~(c) — In establishing the program for which this article provides, the City finds that the City of Richmond has numerous older buildings with many years of remaining life, and that the renovation, retrofit, or rehabilitation of these buildings with qualifying clean energy improvements would make them more efficient and reduce their greenhouse gas emissions. The rehabilitation of commercial and industrial buildings and structures that are at least 40 years old, in particular, supports the same public purposes advanced by the real estate tax exemption provided for this activity.~~

~~(d) — The City further finds that the promotion and development of new buildings and structures with energy efficient or water efficient features that exceed current building code requirements, or which use renewable energy, will enhance the real property tax base of the City, make these buildings, if rented, more attractive to tenants, and thereby promote employment and economic growth in the City.~~

~~Sec. 11-191. Definitions.~~

~~For the purposes of this article, the terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates that a different meaning is intended:~~

~~*Amortization schedule* means the amortization schedule for loan payments necessary to repay a loan.~~

~~*Borrower* means the person who owns or leases an eligible property and voluntarily applies for and obtains a program loan, or that person's successor in title.~~

~~*Borrower certificate* means a notarized certificate from the borrower, certifying that (i) the borrower is (a) current on payments on all loans secured by a mortgage or deed of trust lien on the property, (b) current on real and personal property tax payments, (c) current on all Federal, State, and local taxes and that there is no Federal income tax lien, judgment lien, or other involuntary lien against the property, and (d) not insolvent or in bankruptcy proceedings, and (ii) that the title of the benefitted property is not in dispute as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the capital provider and the City.~~

~~*Capital provider* means the private lending institution that originates a program loan, or its successors or assigns in interest; or, if the City Council appropriates funds for this purpose and if applicable, the City. The capital provider is the source of funding for, or the current holder of, program loans.~~

~~*Cost* as applied to qualifying improvements shall include the cost of all (a) labor, (b) materials, machinery and equipment, (c) architectural, engineering, consulting (such as energy audits and assessments, feasibility studies and reports, and financial projections), financial and legal services, (d) plans, specifications and studies, (e) physical and building condition surveys, (f) commissioning expenses, (g) project management, (h) energy savings or performance guaranty~~

or insurance, (i) post installation evaluation, measurement and verification, and building accreditation, (j) permitting fees, (k) due diligence, financing, and closing costs for the program loan, including administrative and capital provider fees that are directly attributable to a qualifying improvement, and (l) reserves for construction period interest.

Eligible property means a property meeting the conditions specified in Section 11-193.

Loan means a loan from a capital provider to a borrower to finance a project in accordance with this article and the program guidelines.

Loan documents means the program memorandum, financing agreement between the capital provider and the borrower, and any other document, agreement, or instrument executed in connection with a loan.

Loan payment means the periodic installment payments of a loan by a borrower, due and payable to the capital provider in such amounts and at such times as described in the loan documents.

Program means the commercial property assessed clean energy financing program created by this article.

Program administrator means an independent third party whose services are procured by the City.

Program guidelines means those procedures, rules, disclosures, and restrictions promulgated, imposed and enforced by the program administrator for the administration of the program.

Program memorandum means a memorandum concerning the assessment lien for which this article provides, which shall (i) be executed by the borrower, the capital provider, and the City, (ii) include the amortization schedule, and (iii) be recorded in the Clerk's Office of the Circuit Court of the City of Richmond against the property at closing to evidence the voluntary special

~~assessment lien for which this article provides and to secure the repayment of the program financing to the capital provider.~~

~~*Project* means the development of qualifying improvements on an eligible property.~~

~~*Property* means an eligible property as defined in Section 11-193, located within the City of Richmond, for which a program loan is applied for or received.~~

~~*Qualifying improvements* means one or more of the improvements listed in Section 11-192.~~

Sec. 11-192. Qualifying improvements.

~~The cost of the following types of qualifying improvements to existing buildings and structures, or new construction, on eligible property, may be financed through the program:~~

~~(a) — Renewable energy production and distribution facilities, including, but not limited to, solar photovoltaic, solar thermal, geothermal, wind, fuel cells, biomass systems, biogas, or methane recovery systems.~~

~~(b) — Energy usage efficiency systems reasonably expected to reduce the energy usage of the eligible property, including, but not limited to, high efficiency lighting and building systems, heating, ventilation and air conditioning upgrades, air duct sealing, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, cogeneration systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, weather stripping, fenestration and door improvements and modifications, insulation (both in walls, roofs, floors and foundations and in heating, ventilation and air conditioning systems' radiant barriers), building energy management systems, process equipment upgrades, and other forms of conservation; provided that for qualifying improvements that are part of a new building or structure, such qualifying~~

~~improvements shall exceed the minimum energy efficiency requirements of then applicable law, ordinance, regulation or code.~~

~~(c) — Water usage efficiency improvements, such as recovery, purification, recycling and other forms of water conservation. For new construction, these improvements qualify for program financing only if they exceed the minimum water usage efficiency requirements of then applicable law, ordinance, regulation, or code.~~

~~(d) — Construction, renovation, or retrofitting of eligible property directly related to the accomplishment of any purpose listed in subsection (a), (b), or (c) of this section, whether such qualifying improvement was erected or installed in or on a building or on the ground, it being the express intention of the City to allow qualifying improvements that constitute, or are part of, the construction of a new structure or building to be financed with a program loan.~~

~~(e) — Improvements that reduce the impacts of water or wind related natural or manmade events, such as installation of wet and dry floodproofing, raising mechanical and electrical equipment and reinforcement of building envelope to reduce impacts of wind.~~

~~(f) — Stormwater improvements that reduce on site stormwater runoff into the stormwater system such as reduction in the quantity of impervious surfaces, and on-site filtering of stormwater.~~

~~(g) — Any other category of improvement approved by the program administrator authorized by or consistent with the Commonwealth's authorizing legislation for commercial property accessed clean energy financing programs.~~

Sec. 11-193. Eligible properties.

~~Eligible properties include all assessable real estate located within the City of Richmond, with all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, other than (a) any condominium project as defined in Code of Virginia, § 55.1-2000 or (b) any residential property containing four or fewer dwelling units. Eligible properties shall be eligible to participate in the program.~~

Sec. 11-194. Program arrangements.

~~(a) — The capital providers for the program may be private lending institutions. Public funds may be the source of program funding to the extent appropriated for that purpose by the City Council.~~

~~(b) — The time period during which borrowers shall repay the program loan shall not exceed the weighted average useful life of the qualifying improvements or 30 years, whichever is less.~~

~~(c) — Loans shall be repaid by the borrower through loan payments. The capital provider shall be responsible, subject to and in accordance with the program guidelines and loan documents, for the servicing of the loans and the collection of loan payments. In the alternative, loans may be serviced by the program administrator.~~

~~(d) — The interest rate of a program loan shall be determined by mutual agreement of the borrower and the capital provider.~~

~~(e) — All of the costs incidental to the financing, administration, and collection of the program loan shall be borne by the borrower. The program is intended to be self-financed through fees that are designed to cover the costs to design and administer the program, including the~~

~~compensation of any third party administrator. The Chief Administrative Officer shall collect a non-refundable program fee of \$500.00 from the borrower upon closing of the loan.~~

~~(f) — The minimum amount of any single program loan shall be \$50,000.00. The maximum amount of any single program loan shall be \$25,000,000.00.~~

~~(g) — Program administrator. The Chief Administrative Officer shall procure and contract with a program administrator in accordance with applicable public procurement laws and regulations. The program administrator's duties shall be those set forth in its contract with the City, which may include, but shall not be limited to (i) creating the program guidelines and revising and updating the guidelines, as necessary; (ii) processing loan applications to determine project eligibility; (iii) ensuring compliance with the requirements of this article, the program guidelines, and applicable state and local law; and (iv) performing marketing and outreach with regard to the program for which this article provides.~~

~~(h) — The program administrator is authorized and directed to prepare program guidelines for program loans. The program guidelines shall include, without limitation:~~

~~(1) — Disclosures about program fees, costs, and program processes;~~

~~(2) — Eligibility requirements for participation in the program by capital providers, contractors, and other stakeholders;~~

~~(3) — Eligibility requirements for borrowers, qualifying improvements, and projects; and~~

~~(4) — Suggested underwriting criteria including, without limitation, underwriting guidelines established by the Virginia Department of Mines, Minerals, and Energy or the Mid-Atlantic PACE Alliance Regional C-PAVE Toolkit published in June 2018, such as financial ratios related to:~~

- a. ~~—— Total loan (including program loan) to value benchmarks;~~
- b. ~~—— Program assessment to value benchmarks;~~
- c. ~~—— Savings to investment ratio; and~~
- d. ~~—— Debt service coverage ratio. Sec. 11-195. Loan agreements.~~

~~Sec. 11-195. Loan agreements.~~

~~Each program loan agreement shall be in substantially the form of the document attached to Ordinance No. 2019-274, adopted November 12, 2019, with such additions, deletions or alterations as permitted by this article.~~

~~Sec. 11-196. Voluntary special assessment lien.~~

~~(a) —— A program loan shall be secured by a voluntary special assessment lien in the amount of the initial program loan amount, plus all interest, penalties, fees, costs and other amounts accrued or accruing thereon in accordance with the program loan documents against the property where the qualifying improvements are being installed, the existence, terms and conditions of which shall be evidenced by the recordation of a program memorandum in the Clerk's Office of the Circuit Court of the City of Richmond. The capital provider shall record the program memorandum at closing.~~

~~(b) —— The voluntary special assessment lien shall have the same priority status as a property tax lien against real property so long as (i) a written subordination agreement, in a form and substance acceptable to each prior lien holder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the special assessment lien, and (ii) a borrower certificate is submitted to the City prior to recording the program memorandum.~~

~~(c) — The voluntary special assessment lien, and the program memorandum, shall not be amended without the City's consent, except as provided in the program loan documents, including, without limitation the capital provider's transfer, assignment, or sale as provided in this section. The City's consent shall not be unreasonably withheld, conditioned or delayed. Program loans may be transferred, assigned or sold by a capital provider at any time during the loan term without consent from the borrower, the City, or any other party; provided that the capital provider shall (i) record an assignment of the program loan in the Clerk's Office of the Circuit Court of the City of Richmond, and (ii) deliver a copy of the recorded assignment to the Director of Finance and the program administrator, if applicable. Recordation of the assignment shall constitute an assumption by the new capital provider of the rights and obligations contained in the program loan documents.~~

~~(d) — The voluntary special assessment lien shall run with the land. That portion of the assessment that has not yet become due shall not be eliminated by foreclosure of a property tax lien.~~

~~(e) — Delinquent payments shall be subject to all fees and collection methods permitted under the laws of the Commonwealth of Virginia for the collection of delinquent taxes.~~

~~(f) — The Director of Finance shall enforce the voluntary special assessment lien in the same manner that a property tax lien against real property is enforced. The Director of Finance shall be entitled to recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect delinquent property taxes, including utilizing any administrative remedies provided by the Commonwealth of Virginia. The costs and expenses recovered by the City shall be in addition to any costs, expenses, interest, or other amounts due and owing to the capital provider in accordance with the program loan documents. For the purposes of enforcement of the voluntary special assessment lien herein,~~

~~any eligible property which has an outstanding voluntary special assessment imposed pursuant to this article shall be enforceable after June 30 following the first anniversary of either the real estate tax or the special assessment having become due under the authority of Code of Virginia, § 58.1-3965.1.~~

Sec. 11-197. Role of City; limitation of liability.

~~Borrowers and capital providers participate in the program at their own risk. The City makes no representation or warranty as to the validity, enforceability, priority, or any other character of any program loan agreement or voluntary special assessment lien and borrowers and capital providers agree to release and hold the City harmless from and against any and all liabilities, claims, suits, liens, judgments, damages, losses, and expenses, including, without limitation, reasonable legal fees and costs arising in whole or in part from acts, omissions, breach or default of borrowers or capital providers in relation to or under the performance of any program loan agreement.]~~

§ 2. That Chapter 11, Article VIII of the Code of the City of Richmond (2020) be and hereby is amended and reordained by **adding therein new sections** numbered 11-190.1 through 11-197.1 as follows:

Sec. 11-190.1. Purpose.

The purpose of this chapter is to create a “The City of Richmond Commercial Property Assessed Clean Energy (C-PACE) Financing Program,” to operate in coordination with the statewide C-PACE program, all in accordance with Va. Code §15.2-958.3 (hereinafter, the “C-PACE Act”). The local and statewide C-PACE programs, working together, will facilitate Loans made by Capital Providers to Property Owners of Eligible Properties to finance Eligible Improvements thereon. Subject to the limitations set forth in this chapter, the C-PACE Act, or

other applicable law, each C-PACE Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by a voluntary special assessment lien on the Property that is the subject of such Loan.

Sec. 11-191.1. Definitions.

Assessment Payment Schedule means the schedule of installments of C-PACE Payments to be made in the repayment of the C-PACE Loan, which shall be attached as Exhibit B to the C-PACE Program Agreement.

Capital Provider means (i) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guidelines to originate a C-PACE Loan and its successors and assigns; or (ii) the current holder of a C-PACE Loan.

City means the City of Richmond, Virginia.

City Council means the Council of the City of Richmond, Virginia.

City Clerk means the City Clerk appointed pursuant to section 4.04 of the Charter of the City of Richmond (2020), as amended.

Clerk's office means the Office of the Clerk of the Circuit Court of the City of Richmond, Virginia.

Commonwealth means the Commonwealth of Virginia.

C-PACE means Commercial Property Assessed Clean Energy.

C-PACE Act means Virginia's "Commercial Property Assessed Clean Energy (C-PACE) financing programs" law, codified at Va. Code §15.2-958.3.

C-PACE Amendment means an amendment of the C-PACE Lien executed by the Capital Provider, the Property Owner and the Program Manager, as permitted in the C-PACE

Documents, which C-PACE Amendment shall be recorded in the Clerk's Office to evidence each amendment to the C-PACE Loan and the C-PACE Lien.

C-PACE Assignment (CP) means a written assignment by one Capital Provider to another Capital Provider of the C-PACE Payments and C-PACE Lien, either or both, pursuant to the terms of the assignment document.

C-PACE Assignment (Locality) means a written assignment by the City to the Capital Provider to whom the C-PACE Loan is then due, wherein the City relinquishes and assigns its right to enforce the C-PACE Lien to the Capital Provider.

C-PACE Documents means the C-PACE Program Agreement, the Locality Agreement, Financing Agreement, C-PACE Lien Certificate, C-PACE Assignment (Locality) (if any), C-PACE Assignment (CP) (if any), C-PACE Amendment (if any), and any other document, agreement, or instrument executed in connection with a C-PACE Loan.

C-PACE Lien or *Lien* means the voluntary special assessment lien levied by the City against the Property as security for the C-PACE Loan.

C-PACE Lien Certificate means the voluntary special assessment lien document duly recorded among the Land Records against an Eligible Property to secure a C-PACE Loan.

C-PACE Loan or *Loan* means a loan from a Capital Provider to finance a Project, in accordance with the Program Guidelines.

C-PACE Payment means the periodic installment payments of the C-PACE Loan by a Property Owner, due and payable to the City or Capital Provider as permitted by the C-PACE Act in such amounts and at such times as described in the Assessment Payment Schedule.

C-PACE Program means the program established by the City through this chapter, in accordance with the C-PACE Act, that in coordination with the Statewide Program facilitates

the financing of Eligible Improvements and provides for a C-PACE Lien to be levied and recorded against the Property to secure the C-PACE Loan.

C-PACE Program Agreement means the agreement executed among the Property Owner, the City, and the Capital Provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program and the Property Owner's acknowledgment and consent for the City to impose a voluntary special assessment, and record a C-PACE Lien Certificate against the Property Owner's Eligible Property and, if the City so determines, assign the rights to enforce the C-PACE Lien and C-PACE Lien Certificate to the Capital Provider.

Delinquent Payment means any C-PACE Payment that was not paid by a Property Owner in accordance with the C-PACE Documents.

Director of Finance means the City's Director of the Department of Finance or the Director of Finance's designee.

Eligible Improvements means the initial acquisition and installation of any of the following improvements made to Eligible Properties:

- (1) Energy efficiency improvements;
- (2) Water efficiency and safe drinking water improvements;
- (3) Renewable energy improvements;
- (4) Resiliency improvements;
- (5) Stormwater management improvements;
- (6) Environmental remediation improvements; and
- (7) Electric vehicle infrastructure improvements.

Eligible Improvements may be made to both existing Properties and new construction, as further prescribed in this chapter and the Program Guidelines. Eligible Improvements shall include types of authorized improvements added by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition to the elaboration on the types of Eligible Improvements provided in Section 11-193.1(a), below, a Program Administrator may include in its Program Guidelines or other administrative documentation, definitions, interpretations, and examples of these categories of Eligible Improvements.

Eligible Property or Property means all assessable commercial real estate located within the City, with all buildings located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, excluding (i) a residential dwelling with fewer than five (5) units, and (ii) a residential condominium. Common areas of real estate owned by a cooperative or a property owners' association described in Va. Code Title 55.1, Subtitle IV (§55.1-1800 et seq.), that have a separate real property tax identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE Program.

Financing Agreement means the written agreement, as may be amended, modified, or supplemented from time to time, between a Property Owner and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements. The Financing Agreement may contain any lawful terms agreed to by the Capital Provider and the Property Owner.

Land Records means the Land Records of the City of Richmond, Virginia Circuit Court Clerk's Office.

Lender Consent means a written subordination agreement executed by each mortgage or deed of trust lienholder with a lien on the Property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or deed of trust liens.

Loan Amount means the original principal amount of a C-PACE Loan.

Locality Agreement means the Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement between Virginia Energy and the City, pursuant to which the City elects to participate in the Statewide Program.

Program Administrator means the private third party retained by Virginia Energy to provide professional services to administer the Statewide Program in accordance with the requirements of the C-PACE Act, this chapter, the Locality Agreement and the Program Guidelines.

Program Fee(s) means the fee(s) authorized by the C-PACE Act and charged to participating Property Owners to cover the costs to design and administer the Statewide Program, including, without limitation, compensation of the Program Administrator. While Capital Providers are required to service their C-PACE Loans, if a Capital Provider does not do so and the Program Administrator assumes the servicing responsibility and charges a servicing fee, the servicing fee shall also be included among the Program Fees.

Program Guidelines means a comprehensive document setting forth the procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements applicable to the governance and administration of the Statewide Program. The effective version of the Program Guidelines shall be determined according to Section 11-194.1(p).

Program Manager means the City's Chief Administrative Officer or such person designated in writing by the City's Chief Administrative Officer to (i) supervise the City's C-

PACE Program and participation in the Statewide Program, (ii) act as liaison with the Program Administrator and (iii) advise the Program Administrator as to who will sign the C-PACE Documents to which the Locality is a party on the Locality's behalf. If the employee of the City who customarily signs agreements for the Locality is not the person designated as Program Manager, then references in this Ordinance and in the C-PACE Documents to the Program Manager signing certain C-PACE Documents on behalf of the Locality shall be construed to also authorize such customary signatory for the City to execute such C-PACE Documents.

Project means the construction or installation of Eligible Improvements on Eligible Property.

~~[*Property or Eligible Property* means all assessable commercial real estate located within the City, with all buildings located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, excluding (i) a residential dwelling with fewer than five (5) units, and (ii) a condominium as defined in Va. Code §55.1-2100. Common areas of real estate owned by a cooperative or a property owners' association described in Va. Code Title 55.1, Subtitle IV (§55.1-1800 et seq.), that have a separate real property tax identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE Program.]~~

Property Owner means (i) the Property Owner(s) of Eligible Property who voluntarily obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guidelines; or (ii) a successor in title to the Property Owner.

Property Owner Certification means a notarized certificate from Property Owner, certifying that (i) Property Owner is current on payments on Loans secured by a mortgage or deed of trust lien on the Property and on real estate tax payments, (ii) that the Property Owner is

not insolvent or in bankruptcy proceedings, and (iii) that the title of the Property is not in dispute, as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the Program Administrator and Capital Provider.

Statewide Program means the statewide C-PACE financing program sponsored by Virginia Energy, established to provide C-PACE Loans to Property Owners in accordance with the C-PACE Act, this chapter, the Locality Agreement, the C-PACE Documents and the Program Guidelines.

Useful Life means the normal operating life of the fixed asset.

Virginia Code or Va. Code means the Code of Virginia of 1950, as amended.

Virginia Energy means the Virginia Department of Energy.

Sec. 11-192.1. Effective date.

This chapter shall become effective immediately following its adoption.

Sec. 11-193.1. C-PACE Program; eligible improvements.

(a) *C-PACE Program*. The C-PACE Program shall be available throughout the City, provided that the Property Owner, the Property, the proposed Eligible Improvements, the Capital Provider and the principal contractors all qualify for the Statewide Program. The following types of Eligible Improvements may be financed with a C-PACE Loan:

(1) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or weather-stripping), or other capital improvements or systems which result in the reduction of

consumption of energy over a baseline established in accordance with the Program Guidelines;

(2) Water usage efficiency and safe drinking water improvements (e.g., recovery, purification, recycling, and other forms of water conservation), or other capital improvements or systems which result in the reduction of consumption of water over a baseline established in accordance with the Program Guidelines;

(3) Renewable energy production facilities (e.g., solar photovoltaic, fiber optic solar, solar thermal, wind, wave and/or tidal energy, biomass, combined heat and power, geothermal and fuel cells), whether attached to a building or sited on the ground, and the storage and/or distribution of the energy produced thereby, whether for use on-site or sale or export to a utility or pursuant to a power purchase agreement with a non-utility purchaser;

(4) Resiliency improvements which increase the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:

a. Flood mitigation or the mitigation of the impacts of flooding;

b. Inundation adaptation;

c. Natural or nature-based features and living shorelines, as defined in Va. Code § 28.2-104.1;

d. Enhancement of fire or wind resistance, including but not limited to reinforcement and insulation of a building envelope to reduce the impacts of excessive heat or wind;

e. Microgrids;

- f. Energy storage; and
 - g. Enhancement of the resilience capacity of a natural system, structure, or infrastructure;
- (5) Stormwater management improvements that reduce onsite stormwater runoff into a stormwater system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of stormwater;
- (6) Environmental remediation improvements, including but not limited to:
- a. Improvements that promote indoor air and water quality;
 - b. Asbestos remediation;
 - c. Lead paint removal; and
 - d. Mold remediation;
- (7) Soil or groundwater remediation;
- (8) Electric vehicle infrastructure improvements, such as charging stations;
- (9) Construction, renovation, or retrofitting of a Property directly related to the accomplishment of any purpose listed in subsections (1) – (8) above, whether such Eligible Improvement was erected or installed in or on a building or on the ground; it being the express intention of the City to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; and
- (10) Any other category of improvement (i) approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the Statewide Program, in accordance with the C-PACE Act (including amendments thereto which authorize additional types of Eligible Improvements), or (ii) added by the

General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition, a Program Administrator may include in its Program Guidelines or other administrative documentation, definitions, interpretations and examples of these categories of Eligible Improvements.

(b) *Use of C-PACE Loan proceeds.* The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to Eligible Improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), program fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.

(c) *Program applications; prioritization.* The Program Administrator shall make available the Statewide Program's program application process, to provide for the review and approval of proposed Eligible Improvements and C-PACE Documents. Program applications will be processed by the Statewide Program in accordance with the eligibility requirements and procedures set forth in the Program Guidelines.

Sec. 11-194.1. C-PACE Loan requirements; program fees; reporting; program administrator; program guidelines.

(a) *Source of Loans.* C-PACE Loans shall be originated by Capital Providers. The City or its respective governmental entities shall have no obligation to originate or guarantee any C-PACE Loans.

(b) *C-PACE Loan Amount thresholds.* The minimum Loan Amount that may be financed for each Project is fifty thousand dollars (\$50,000.00). There is no maximum aggregate amount that may be financed with respect to an Eligible Property, except as stipulated in the

Program Guidelines. There shall be no limit on the total value of all C-PACE Loans issued under the C-PACE Program.

(c) *C-PACE Loan refinancing or reimbursement.* The Program Administrator may approve a Loan application submitted within two (2) years of the City's issuance of a certificate of occupancy or other evidence that the Eligible Improvements comply substantially with the plans and specifications previously approved by the City and upon a determination by the Program Administrator that such Loan may refinance or reimburse the Property Owner for the total costs of such Eligible Improvements.

(d) *C-PACE Loan interest.* The interest rate of a C-PACE Loan shall be as set forth in the C-PACE Documents.

(e) *C-PACE Loan term.* The term of a C-PACE Loan shall not exceed the weighted average Useful Life of the Eligible Improvements, as determined by the Program Administrator.

(f) *Apportionment of costs.* All of the costs incidental to the financing, administration, collection, and/or enforcement of the C-PACE Loan shall be borne by the Property Owner.

(g) *Financing Agreements.* Capital Providers may use their own Financing Agreements for C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this chapter, the C-PACE Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the C-PACE Act, and the C-PACE Program Agreement shall prevail.

(h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program, Property Owner and Capital Provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for participation in the C-PACE Program. The Program

Manager is authorized to approve the C-PACE Loan and execute the C-PACE Program Agreement on behalf of the City without further action by the City Council. The C-PACE Program Agreement shall be binding upon the parties thereto and their respective successors and assigns until the C-PACE Loan is paid in full. ~~[The]~~ To conform to a modification of the Statewide Program template version of the C-PACE Program Agreement, the Program Administrator may modify [the Statewide Program template version of the] C-PACE Program Agreement in accordance with the provisions of section 11-194.1(p) as necessary to further the Statewide Program's purpose and to encourage Program participation, so long as such modifications do not conflict with the Program Guidelines, this chapter, the Locality Agreement or the C-PACE Act.

(i) *Repayment of C-PACE Loan; collection of C-PACE Payments.* C-PACE Loans will be repaid by the Property Owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment Payment Schedule, the C-PACE Documents and Program Guidelines. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a Capital Provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator. Nothing herein shall prevent the Capital Provider or the Program Administrator from directly billing and collecting the C-PACE Payments from the Property Owner to the extent permitted by the C-PACE Act or other applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default thereunder is governed by Section 11-195.1(e).

(j) *C-PACE Loan assumed.* A party which acquires a Property which is subject to a C-PACE Lien, whether it obtained ownership of the Property voluntarily or involuntarily,

becomes the Property Owner under the C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay all remaining unpaid C-PACE Payments which are due and which accrue during such successor Property Owner's period of ownership. Only the current C-PACE Payment and any Delinquent Payments, together with any penalties, fees and costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

(k) *Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided that the Capital Provider shall (i) notify the Property Owner and the Program Administrator of the transfer prior to the billing date of the next C-PACE Payment due (and within thirty (30) days if the C-PACE Loan is serviced by the Program Administrator), (ii) record a C-PACE Assignment (CP) among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the Property Owner, the City, and the Program Administrator. Recordation of the C-PACE Assignment (CP) in the Land Records shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the C-PACE Documents.

(l) *Program Fees.* The Statewide Program is self-financed through the Program Fees charged to participating Property Owners, together with any funds budgeted by the General Assembly to support the Statewide Program. The Program Fees are established to cover the actual and reasonable costs to design and administer the Statewide Program, including the compensation of a third-party Program Administrator. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fees may be changed by the Program

Administrator from time to time and shall only apply to C-PACE Loans executed after the date the revised fees are adopted.

(m) *Locality Agreement.* The City shall opt into the Statewide Program by entering into the Locality Agreement, adopting the Statewide Program as the City’s own C-PACE Program. In accordance with the C-PACE Act, opting into the C-PACE Program shall not require the City to conduct a competitive procurement process. The Program Manager is authorized to execute the Locality Agreement on behalf of the City without further action by the City Council.

(n) *Program Guidelines.* The Program Administrator, under the direction of and in consultation with Virginia Energy, has designed the Program Guidelines to create an open, competitive and efficient C-PACE Program. The Program Administrator may modify the Program Guidelines from time to time, provided such amendments are (i) consistent with the C-PACE Act and (ii) approved by Virginia Energy before taking effect.

(o) *Indemnification.* The Program Administrator shall indemnify, defend and hold the City, its officers, agents and employees harmless against any and all losses, liabilities, claims, damages, and expenses (including court costs and reasonable attorneys’ fees) arising from any material default or breach by the Program Administrator of its obligations to the City under or in connection with the Statewide Program as well as all claims against the City, its officers, agents and employees, arising from errors, omissions, negligent acts or intentional acts of the Program Administrator, its officers, agents and employees.

(p) *Effective Version of [~~Program Guidelines~~] Documents.*

(1) The effective version of the Program Guidelines, C-PACE Program Agreement, C-PACE Lien Certificate, C-PACE Amendment, C-PACE Assignment (“CP”) and C-PACE Assignment (Locality) (the “Documents”) in the City shall be the

version in use by Virginia Energy and the Program Administrator as of the adoption date of Ordinance Number ____ - ____, adopted _____.

(2) If [~~the Program Guidelines~~] any of the Documents are revised by Virginia Energy, the Program Administrator, or any other authorized party after the adoption date of the ordinance, the City shall adopt the revised [~~Program Guidelines~~] Documents automatically unless the proposed revision(s) to the [~~Program Guidelines~~] Documents may change the rights or obligations of the City (“Substantial Revisions”).

(3) Substantial Revisions shall not take effect in the City until [~~sixty~~] 90 days after the Program Manager and the City Clerk receive written notice from Virginia Energy or the Program Administrator of such Substantial Revisions. During such 90-day period, City Council may reject the noticed Substantial Revisions through a resolution (“Rejection Resolution”).

(4) If City Council adopts a Rejection Resolution during the aforementioned 90-day period, the [~~Program Guidelines~~] Documents in effect in the City shall not include the Substantial Revisions unless the Substantial Revisions are resubmitted pursuant to subsection (p)(3) of this section and are not subject to a Rejection Resolution following such resubmission.

Sec. 11-195.1. Levy of assessment; recordation; priority; amendment; enforcement and collection costs.

(a) *Levy of voluntary special assessment lien.* Each C-PACE Loan made under the C-PACE Program shall be secured by a voluntary special assessment lien (i.e., a C-PACE Lien) levied by the City against each Property benefitting from the Eligible Improvements financed by such C-PACE Loan. Each C-PACE Lien shall be evidenced by a C-PACE Lien Certificate in the Loan Amount, [~~which secures~~] but the Lien Certificate shall secure and [~~ensures~~] ensure

repayment of not only the principal of the C-PACE Loan, but also any delinquent and accrued interest, late fees, penalties, Program Fees, and collection costs (including reasonable attorneys' fees ~~[of]~~ and costs not to exceed 20% of the [unpaid principal Loan Amount] amount of the unpaid delinquent payments,) payable in connection therewith.

(b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien Certificate shall have a copy of the Assessment Payment Schedule attached thereto as an exhibit. The Program Manager is hereby authorized to, and shall promptly, execute the C-PACE Lien Certificate on behalf of the City and deliver it to the Capital Provider, without any further action by the City Council. Upon the full execution of the C-PACE Documents and funding of the C-PACE Loan, the Capital Provider shall cause the recordation of the C-PACE Lien Certificate in the Land Records.

(c) *Priority.* The C-PACE Lien shall have the same priority as a real property tax lien against real property, except that it shall have priority over any previously recorded mortgage or deed of trust lien on the Property only if prior to the recording of the C-PACE Lien, (i) Property Owner has obtained a written Lender Consent, in a form and substance acceptable to the holder of such prior mortgage or deed of trust in its sole and exclusive discretion, executed by such lienholder and recorded with the C-PACE Lien Certificate in the Land Records; and (ii) prior to the recording of the C-PACE Lien Certificate, Property Owner has delivered an executed Property Owner Certification to the City in connection with the C-PACE Loan closing. Only the current C-PACE Payment and any Delinquent Payments shall constitute a first lien on the Property. The C-PACE Lien shall run with the land and that portion of the C-PACE Lien under the C-PACE Program Agreement that has not yet become due shall not be eliminated by foreclosure of a real property tax lien.

(d) *Amendment of lien.* Upon written request by a Capital Provider in accordance with the Program Guidelines, the Program Manager, without any further action by the City Council, shall join with the Capital Provider and the Property Owner in executing a C-PACE Amendment of the C-PACE Loan and the C-PACE Lien after the closing of a C-PACE Loan. The C-PACE Amendment shall be recorded in the Land Records.

(e) *Enforcement and collection costs.* In the event of Property Owner's default under the terms of the C-PACE Documents, the City, acting by and through the Director of Finance, may enforce the C-PACE Lien for the amount of the Delinquent Payments, [~~plus the remaining unpaid principal balance of the Loan Amount,~~] late fees, penalties, interest, reasonable attorneys' fees [~~equal~~] and costs not to exceed 20% of the amount of the unpaid [~~principal Loan Amount~~] delinquent payments, and any other costs or expenses of collection, in the same manner that a delinquent tax may be pursued by action at law under the provisions of Virginia Code §§58.1-3953, *et seq.*, or in like manner as the enforcement of a property tax lien against real property under the provisions of Virginia Code §§ 58.1-3965, *et seq.* If the City elects not to enforce the C-PACE Lien, which election shall be made within 30 days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City shall, within 15 days of the City's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the land records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loans closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and

recording, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real estate property may be enforced under Title 58.1, Chapter 39 of the Code of Virginia (1950), as amended, including the institution of suit in the name of the City and its Director of Finance, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement; provided, that prior to conducting any aspect of enforcement such legal counsel shall apply to the City Attorney for appointment as special counsel to the City pursuant to section 4.17 of the Charter of the City of Richmond (2020), as amended. Such legal counsel shall, upon appointment by the City Attorney, have the status of “Special Counsel to the City and its Director of Finance” and possess all the rights and powers of an attorney employed under sections 58.1-3966 and 58.1-3969 of the Code of Virginia (1950), as amended, with the express authority to exercise for the benefit of the Capital Provider every power granted to the City or its Director of Finance or its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code, as amended. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or the Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, as amended, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount for sued and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act, or general law. The Property Owner of a Property being sold to

pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975 and any other right of redemption available to the Property Owner under Virginia law.

Sec. 11-196.1. Role of the City; limitation of liability.

Property Owners and Capital Providers participate in the C-PACE Program and the Statewide Program at their own risk. By executing the C-PACE Documents, including the C-PACE Program Agreement, or by otherwise participating in the C-PACE Program and the Statewide Program, the Property Owner, Capital Provider, contractor, or other party or participant acknowledge and agree, for the benefit of the City and as a condition of participation in the C-PACE Program and the Statewide Program, that: (i) the City undertakes no obligations under the C-PACE Program and the Statewide Program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Property Owner, the City has no obligation to use City funds to make C-PACE Payments to any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Property Owner and Capital Provider; (iii) no C-PACE Loan, C-PACE Payment, C-PACE Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall be backed by the credit of the City, the Commonwealth, or its political subdivisions, including, without limitation, City taxes or other City funds; (iv) no C-PACE Loan, C-PACE Payment, C-PACE Lien or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction; (v) the City has not made any representations or warranties, financial or otherwise, concerning a Property Owner, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the City makes no representation or

warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any C-PACE Document, or any assignment or amendment thereof; (vii) the City assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; and (viii) each Property Owner, Capital Provider, or other participant under the C-PACE Program, shall comply with all applicable requirements of the C-PACE Documents.

Sec. 11-197.1. Severability.

As provided by Section 1-7 of the Code of the City, the provisions of this chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid, or that the application of any part of the chapter or provision to any person or circumstance is invalid, the remaining provisions of this chapter shall not be affected by that decision and continue in full force and effect.

§ 3. That, as applicable, the documents used to effectuate the purposes of the Commercial Property Assessed Clean Energy Financing Program as set forth in Chapter 11, Article VIII, consisting of new sections 11-190.1 through 11-197.1, of the Code of the City of Richmond (2020), as amended, for which this ordinance provides, shall be substantially in the form of the documents attached to this ordinance labeled as “Attachment [~~B~~] A, As Amended,” “Attachment [~~C~~] B, As Amended,” “Attachment [~~D~~] C, As Amended,” “Attachment [~~E~~] D, As Amended,” [~~and~~] “Attachment [~~F~~] E, As Amended, and Attachment F, As Amended.”

§ 4. That, for purposes of the Commercial Property Assessed Clean Energy Financing Program as set forth in Chapter 11, Article VIII, consisting of new sections 11-190.1 through 11-197.1, of the Code of the City of Richmond (2020), as amended, for which this ordinance provides, and for the avoidance of doubt:

(a) The document entitled “Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement” and attached to this ordinance as “Attachment [~~B~~] A, As Amended” shall be the “Locality Agreement,” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(b) The document entitled “Commercial Property Assessed Clean Energy (C-PACE) Financing Program, C-PACE Program Agreement” and attached to this ordinance as “Attachment [~~C~~] B, As Amended” shall be the “C-PACE Program Agreement,” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(c) The document entitled “Notice and Certificate of C-PACE Special Assessment Lien and Abstract of Ordinance” and attached to this ordinance as “Attachment [~~D~~] C, As Amended” shall be the “C-PACE Lien Certificate,” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(d) The document entitled “Amended and Restated Notice and Certificate of C-PACE Special Assessment Lien” and attached to this ordinance as “Attachment [~~E~~] D, As Amended” shall be the “C-PACE Amendment,” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(e) The document entitled “C-PACE Lien Assignment (CP)” and attached to this ordinance as “Attachment [~~F~~] E, As Amended” shall be the “C-PACE Assignment (CP),” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(f) The document entitled “C-PACE Lien Assignment (Locality) and attached to this ordinance as “Attachment F, As Amended” shall be the “C-PACE Assignment (Locality) as defined in section 11.101.1 of the Code of the City of Richmond (2020), as amended.

§ 5. This ordinance shall be in force and effect upon adoption.



City of Richmond

Intracity Correspondence

O&R REQUEST

DATE: March 31, 2023

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer

THROUGH: Sabrina Joy-Hogg, DCAO, Finance and Administration

Designee

THROUGH: Sheila D. White, Director, Department of Finance

THROUGH: Jason P. May, Director, Budget and Strategic Planning

THROUGH: Sharon L. Ebert, DCAO, Economic Development and Planning

FROM: Laura C. Thomas, Director, Office of Sustainability

RE: Opt-In to Statewide C-PACE Program

ORD. OR RES. No. _____

PURPOSE: To opt-in to the statewide Commercial Property Assessed Clean Energy (“C-PACE”) program sponsored by the Virginia Department of Energy (the “Statewide Program”). The City shall opt-in to the Statewide Program by passing an ordinance which (the “New Ordinance”):

- (1) Repeals Ordinance Nos. 2019-274”) and 2020-129 and replaces them with a new ordinance (the “New Ordinance”) to amend and reordain Chapter 11 of the Code of the City of Richmond (2020) (“City Code”) by replacing the entire current article number VIII with a new article number VIII, which shall be substantially the same as the document attached hereto as “Attachment A;”
- (2) Authorizes the Chief Administrative Officer to execute a Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement, which shall be the same as the document attached hereto as “Attachment B;” and
- (3) Adopts the documents attached hereto as Attachments C, D, E, and F as the City’s templates to be used for C-PACE transactions within the City.

REASON: The City administration desires to opt-in to the Statewide Program. In order to opt-in to the Statewide Program, the Virginia Department of Energy (“VE”) and its procured administrator of the Statewide Program, Virginia PACE Authority (“VPA”), require prospective localities to: (A) adopt an ordinance substantially similar to the Statewide Program Model Ordinance template enabling the locality to opt-in to the Statewide Program (the City’s approved revisions to the template ordinance can be found at Attachment A), and (B) execute a VE – Locality Commercial Property Assessed Clean Energy Agreement (the City’s revisions to VE and VPA’s template of this agreement can be found at Attachment B). Thus, in order to opt-in to the Statewide Program, the City needs an ordinance to accomplish items A and B.

RECOMMENDATION: The City Administration recommends adoption of the New Ordinance.

BACKGROUND: A C-PACE Program provides loans to commercial property owners for the initial acquisition and installation of clean energy, resiliency, or stormwater management improvements. Per Va. Code § 15.2-958.3, commercial properties that are eligible for C-PACE loans include all assessable commercial real estate, and all buildings located or to be located thereon, except for residential dwellings with fewer than five dwelling units or a condominium as defined in Va. Code § 55.1-2000 used for residential purposes.

C-PACE Programs are authorized by Virginia Code § 15.2-958.3. In 2020, the General Assembly adopted and Governor Northam signed HB 654 which directed the Virginia Department of Mines, Minerals, and Energy (the prior name of VE) to sponsor and oversee a statewide clean energy financing program that enables localities to participate by adopting enabling legislation. *See* Virginia Code § 15.2-958.3(H). The Statewide Program is the fruition of this directive.

Ordinance 2019-274, introduced October 14, 2019, and adopted by City Council on November 12, 2019, directs the City to establish a C-PACE Program. The 2019 Ordinance contained language indicating that the 2019 Ordinance “shall be in force and effect July 1, 2020.” The effective date of the 2019 Ordinance was revised to March 1, 2021 by Ordinance 2020-129. Ordinance 2020-129 revised the effective date of Ordinance 2019-274 because “In doing so, the City [would] have more time to evaluate the implementation of the State’s C-PACE program and plan accordingly.” Ordinance 2020-129 at Ordinance/Resolution Request. As of September 2022, the Statewide Program is now fully operational. Virginia Beach, Albemarle County, and Shenandoah County have already opted into the Statewide Program.

The City Administration strongly supports the City’s participation in the Statewide Program. Opting into the Statewide Program will prevent duplicative efforts and save the City the costs of administering its own program. Opting into the Statewide Program is in the best interests of city taxpayers because it is a fiscally responsible use of City resources. The Statewide Program also provides a consistent statewide process, which is in the best interest of commercial property owners in the city because it will encourage lenders to lend in the City by making it possible to offer the same C-PACE product in Richmond that they offer in other Virginia localities instead of needing to develop special C-PACE products just for Richmond.

FISCAL IMPACT / COST: None.

FISCAL IMPLICATIONS: None.

BUDGET AMENDMENT NECESSARY: No.

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: May 8, 2023.

CITY COUNCIL PUBLIC HEARING DATE: June 12, 2023. This delayed public hearing date may be necessary to meet the advertising requirements of Va. Code 15.2-958.3(G).

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development.

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: N/A.

AFFECTED AGENCIES: Finance, Economic Development, Office of Sustainability.

RELATIONSHIP TO EXISTING ORD. OR RES.: Ord. No. 2019-274, Ord. No. 2020-129.

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS:

ATTACHMENT NAME	ATTACHMENT EXPLANATION
Attachment A: Statewide Program “Model Ordinance” template document revised by the City	A template created by VE and VPA of a piece of legislation to be enacted by a locality enabling C-PACE financing in the locality. The version of this template attached as “Attachment A” has been revised by the City.
Attachment B: Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement	An agreement to be executed between the Virginia Department of Energy and the City to allow the City to participate in the Statewide Program.
Attachment C: Statewide Program “C-PACE Program Agreement” template document revised by the City	An agreement to be executed among property owners seeking to participate in a C-PACE transaction (the “Property Owner”), the City, and the capital provider providing financing to the Property Owner to enable the C-PACE transaction, and their respective successors and

	<p>assigns, which includes the terms and conditions for participation in the C-PACE Program and the Property Owner’s acknowledgement and consent for the City to impose a voluntary special assessment, and record a C-PACE Lien Certificate against the Property Owner’s eligible property.</p>
<p>A <u>ttachment D</u>: Statewide Program “C-PACE Lien Certificate” template document revised by City</p>	<p>The voluntary special assessment lien document duly recorded among the City’s land records against an eligible property to secure a C-PACE Loan.</p>
<p>A <u>ttachment E</u>: Statewide Program “C-PACE Amendment” template document revised by the City</p>	<p>An amendment of the C-PACE lien executed by the C-PACE capital provider, the Property owner, and the City’s Chief Administrative Officer, as to be permitted by the New Ordinance and effected by the C-PACE Lien Certificate document (Attachment D hereto) which C-PACE Amendment shall be recorded in the City Circuit Court Clerk’s office to evidence each amendment to the C-PACE loan and C-PACE lien.</p>
<p>A <u>ttachment F</u>: Statewide Program “C-PACE Lien Assignment (CP)” template document revised by the City</p>	<p>A written assignment by one capital provider to another capital provider of the C-PACE payments and C-PACE lien, either or both, pursuant to the terms of the assignment document.</p>

STAFF: Laura Thomas, Director, Office of Sustainability, 804-646-5931

ATTACHMENT A AS AMENDED

**VIRGINIA ENERGY – LOCALITY
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AGREEMENT**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20__, between the City of Richmond, Virginia, (the “Locality”), and the Virginia Department of Energy (“Virginia Energy”), a public agency of the Commonwealth of Virginia.

RECITALS

1. Pursuant to § 15.2-958.3. of the Code of Virginia, entitled “Financing clean energy, resiliency, and stormwater management programs” (“C-PACE Act”), Locality has exercised its right to authorize contracts to provide C-PACE loans through the adoption of a C-PACE ordinance (“Ordinance”), attached hereto as Exhibit 1.
2. Pursuant to the C-PACE Act and Ordinance, Locality has agreed to opt into the statewide C-PACE loan program sponsored by Virginia Energy (“Virginia C-PACE Program”) and administered by a competitively selected private program administrator (“Program Administrator”). The current Program Administrator and its contact information are set forth on Exhibit 2 attached hereto.
3. The Virginia C-PACE Program provides the Locality with a uniform process for the application, approval, closing and servicing of C-PACE loans and with outreach and training support to promote the program to property owners. A Locality participating in the Virginia C-PACE Program agrees to adopt the set of legal and administrative documents and to abide by the requirements of the statewide C-PACE Program Guidelines (“Program Guidelines”) attached hereto as Exhibit 3.

NOW THEREFORE, to implement the local C-PACE Ordinance, the Locality hereby opts into the Virginia C-PACE Program sponsored by Virginia Energy and managed and operated by Virginia Energy’s Program Administrator, on the terms set forth hereinbelow and in accordance with the program design detailed in the Program Guidelines.

ARTICLE 1

(a) **Term.** The term of this Agreement shall commence upon the date the last party executes the Agreement. This Agreement shall remain in full force and effect until either Virginia Energy terminates the Virginia C-PACE Program or either party terminates this Agreement. Either party may terminate this Agreement at any time upon ninety (90) days’ advance written notice to the other party, provided that the collection of C-PACE Lien payments for C-PACE loans made prior to the termination date shall continue until all C-PACE Lien payments (including the interest, penalties, and fees thereon) have been collected and all such C-PACE loans have been paid in full.

(b) **Servicing of C-PACE Loans.** C-PACE Loans shall be serviced by their respective capital provider, in accordance with the Ordinance, the Program Guidelines, and any other relevant C-PACE Documents.

(c) Enforcement of C-PACE Liens. The Locality has agreed to decide whether to enforce or delegate on a project-by-project basis in accordance with the C-PACE Act, the obligations of which are described in the Locality's Ordinance, the Program Guidelines, and any other relevant C-PACE Documents.

(d) Cooperation in Operating C-PACE Program. The Locality shall cooperate with the Program Administrator in the latter's operation of the C-PACE Program in the Locality. This cooperation shall include the Locality:

(i) designating (A) an employee of the Locality to serve as Program Manager, and if the Program Manager wishes to delegate some or all of the duties assigned to the Program Manager, identifying the Program Manager's designee and promptly communicating the contact information for the Program Manager and any designee to the Program Administrator and (B) which employee(s) of the Locality will sign documents requiring the Locality's signature for C-PACE Loan closings;

(ii) making reasonable efforts to comply with the review and other periods of time prescribed for the Locality to take a required action specified in the Program Guidelines and the C-PACE Documents;

(iii) taking reasonable steps to procure the timely participation of the Locality's Director of Finance in the processes and procedures described in the Program Guidelines, the C-PACE Documents and the Ordinance as involving the Director of Finance, it being understood that such processes and procedures are based on the collection of C-PACE Payments by the Capital Provider in the same manner as real property taxes; and

(iv) in the discretion of the Locality, providing reasonable assistance in jointly promoting the Locality's C-PACE Program to lenders, contractors and businesses located in, or considering locating in, the Locality.

(e) Not less than ten (10) business days prior to any action required of the Locality's Director of Finance under the terms and conditions of the C-PACE Documents, including but not limited to the C-PACE Program Agreement, the Program Administrator shall cause the Capital Provider or the Property Owner to (i) provide written notice to the Locality's Director of Finance of such request for action by the Locality's Director of Finance, and (ii) to submit any documents requiring the Locality's Director of Finance's review or signature, or both, to the Locality's Director of Finance and the Program Manager.

ARTICLE 2

MISCELLANEOUS PROVISIONS

(a) Model Ordinance. The Locality represents and warrants to Virginia Energy and its Program Administrator that the Ordinance substantially conforms to model ordinance adopted by the Program Administrator for use in the Virginia C-PACE Program and furnished to the Locality.

(b) Non-Assignability. The Locality may not assign or transfer its rights or obligations

under this Agreement without prior written consent of Virginia Energy; provided, however, that this paragraph shall not be construed to apply to, or restrict, the assignment of C-PACE Liens in accordance with the Locality's Ordinance and related C-PACE Documents.

(c) Locality Acknowledgments. The Locality acknowledges and agrees that: (i) Virginia Energy has employed the Program Administrator to carry out Virginia Energy's obligations under this Agreement and the Virginia C-PACE Program generally; (ii) if Virginia Energy replaces the Program Administrator listed on Exhibit 2, then the successor Program Administrator will succeed to the rights, duties and obligations of the Program Administrator, except to the extent specified in Virginia Energy's agreements with such Program Administrators; (iii) for purposes of this Agreement and the Locality's C-PACE program, the Program Administrator shall speak and act for Virginia Energy and that any notices required under the terms of this Agreement to be sent to Virginia Energy shall also be sent to the Program Administrator; (iv) the Program Administrator is made a third party beneficiary of this Agreement, and by accepting the benefits of such status in writing to the Locality, shall be deemed to have covenanted with the Locality to adhere to and comply with its obligations under the Program Guidelines in administering the Locality's C-PACE Program; (v) the Program Administrator shall remain a third party beneficiary of this Agreement until either (A) Virginia Energy replaces the current entity serving as Program Administrator with a new entity to serve as Program Administrator, or (B) the Program Administrator sends written notice to the Program Manager and the City Clerk of the Locality indicating that the Program Administrator elects to no longer be made a third party beneficiary of this Agreement; and (vi) the Program Administrator is entitled to be paid by Property Owners (the Locality having no liability therefor) the Program Fees set forth from time to time in the Program Guidelines.

(d) Non-waiver; Amendment. Any waiver of any provision of this Agreement must be in writing and mutually agreed to by Virginia Energy and the Locality. Except for a specific provision of this Agreement which is amended, this Agreement shall remain in full force and effect after such amendment and is subject to the same laws, obligations, conditions, provisions, rules, and regulations as it was before the amendment.

(e) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(f) Scanned Signatures. Scanned signatures (e.g., a "PDF" document) shall have the same force, effect and validity as an original signature.

(g) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, hand delivered, or overnight delivery service, to the parties, as follows:

If to the Locality:

Office of Sustainability
City of Richmond

730 East Broad Street, 8th Floor
Richmond, VA 23219
Attention: Director

With a copy to:

Chief Administrative Officer's Office
City of Richmond
900 East Broad Street, 14th Floor
Richmond, VA 23219
Attention: Chief Administrative Officer

If to Virginia Energy:

817 Washington Building
1100 Bank Street
Richmond, Virginia 23219
Attention: Energy Efficiency and Financing Programs Manager

With a copy to the Program Administrator at the address on Exhibit 2.

Any party may change its notice address by providing the new notice address to the other parties in accordance with this paragraph (g).

(h) Jurisdiction and Venue. This Agreement shall be construed, interpreted, and enforced according to the laws of the Commonwealth of Virginia. Any claim brought in connection with this Agreement must be brought in the Circuit Court of the City of Richmond and the parties consent to its jurisdiction.

(i) Definitions and Captions. Capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Ordinance attached hereto in Exhibit 1. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement, and do not affect its meaning or construction.

(j) Integration. This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(j) No Joint Venture, etc. Nothing in this Agreement, and no act of the Locality, Virginia Energy or the Program Administrator, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Locality and Virginia Energy.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the Locality and Virginia Energy have each caused this Agreement to be executed and delivered as of the date set forth above:

**CITY OF RICHMOND,
VIRGINIA**

By: _____
Name: _____
Title : _____
Date: _____

Approved as to Form:

Assistant City Attorney

*[Remainder of the page intentionally left blank;
Signature pages continue]*

[VIRGINIA ENERGY – LOCALITY AGREEMENT
SIGNATURE PAGE FOR VIRGINIA DEPARTMENT OF ENERGY]

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENERGY**

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT 1

COPY OF LOCALITY ORDINANCE

(See attached)

EXHIBIT 2

NAME AND ADDRESS OF PROGRAM ADMINISTRATOR

Virginia PACE Authority
7150 Farmers Drive
West Point, Virginia 23181
Attention: Abigail C. Johnson, Executive Director
Tel: 757-603-3555
abby@virginiapace.com

EXHIBIT 3
PROGRAM GUIDELINES

(See attached)

(102922699.2)

ATTACHMENT B AS AMENDED

**COMMERICAL PROPERTY ASSESSED
CLEAN ENERGY (C-PACE) FINANCING PROGRAM**

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the “Agreement”) is made and entered into as of the date of the City’s signature (the “Effective Date”), by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”); _____, a [*state of organization*] [*type of business entity*] (the “Property Owner”); and _____, a [*state of organization*] [*type of business entity*] (the “Capital Provider”), and their respective successors and assigns (collectively, the “Parties”).

RECITALS:

WHEREAS, §15.2-958.3 of the Virginia Code (the “C-PACE Act”), authorizes the creation of a statewide Commercial Property Assessed Clean Energy (“C-PACE”) Program (the “Statewide Program”), sponsored by Virginia Energy and managed by Virginia Energy’s selected program administrator (the “Program Administrator”), and authorizes Virginia localities to opt into the Statewide Program instead of establishing a stand-alone C-PACE Program for the City; and

WHEREAS, the Statewide Program facilitates Capital Providers making C-PACE Loans to Property Owners to enable the Property Owners to make Eligible Improvements to Eligible Properties; and

WHEREAS, each C-PACE Loan is secured by a Property Owner’s voluntary grant of a C-PACE Lien on an Eligible Property to the locality in which the Eligible Property is located; and

WHEREAS, the City has determined to enable Property Owners to obtain C-PACE Loans for Eligible Improvements located on Eligible Properties in the City by causing the City to opt into the Statewide Program, adopting the Statewide Program as the City’s own C-PACE Program, and to implement such determination, the Council of the City of Richmond, Virginia has adopted, amended and reordained Chapter 11, Article VIII of the Code of the City (the “Ordinance”); and

WHEREAS, pursuant to the C-PACE Act, the Ordinance, a Locality Agreement between Virginia Energy and the City, and the Program Guidelines, the Parties are required to enter into a written agreement specifying the terms and conditions for participating in the Statewide Program;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and to implement the purposes of the C-PACE Act and the Ordinance, the Parties hereby agree as follows:

Section 1 - Definitions.

Unless otherwise defined herein, capitalized terms in this Agreement shall have the meanings given them in the Ordinance.

Section 2 – Representations and Covenants.

(a) Property Owner represents and covenants that it is the fee simple record owner of the Eligible Property more particularly described in Exhibit A hereto (the “Property”).

(b) Property Owner represents and covenants that (i) it has applied to participate in the Statewide Program, (ii) the Program Administrator has given notice to the City of its approval of Property Owner’s application for C-PACE financing and (iii) desires to obtain a C-PACE Loan to construct or install certain Eligible Improvements on the Property.

(c) Property Owner represents and covenants that it has entered into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. The Assessment Payment Schedule for the C-PACE Loan is set forth in Exhibit B hereto. Property Owner and Capital Provider acknowledge and agree that the Financing Agreement includes only those costs and fees (including Program Fees) for which a C-PACE Lien may be imposed under the C-PACE Act, the Ordinance, and the C-PACE Documents.

(d) The Parties acknowledge and agree that should Property Owner default on the C-PACE Loan, the City, acting through its Director of Finance, may enforce the C-PACE Lien for the benefit of Capital Provider according to the C-PACE Documents, the C-PACE Act, and the Ordinance. If the City, acting through its Director of Finance, determines not to enforce the C-PACE Lien, then the City and its Director of Finance shall proceed as provided for in Section 3(h)(3), below.

(e) Property Owner and Capital Provider confirm that they have obtained Lender Consents subordinating each deed of trust or mortgage lien against the Property to the lien to be created by this C-PACE Loan.

Section 3 – Program Terms and Conditions.

(a) C-PACE Loan. The Capital Provider will provide financing for the Property Owner’s Eligible Improvements in accordance with the C-PACE Documents.

(b) Program Fee(s): Property Owner agrees that Program Fee(s) will be [paid directly by Property Owner to the Program Administrator][deducted from C-PACE Loan proceeds at funding and remitted by Capital Provider to the Program Administrator][deducted from C-PACE Payments and remitted by Capital Provider to the Program Administrator] in accordance with the C-PACE Documents and the Program Guidelines and in the amount of \$_____, as follows:

(c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to Property Owner under the Program, Property Owner hereby requests and authorizes the City to levy a C-PACE Lien against the Property which secures and ensures repayment of not only the principal of the C-PACE Loan but also any delinquent and accrued interest, late fees, other types of fees, penalties, Program Fees and collection costs (including reasonable attorneys’ fees and

costs not to exceed 20% of the amount of the unpaid delinquent payments), payable in connection therewith. To evidence the C-PACE Lien, Property Owner requests that the City execute a C-PACE Lien Certificate that will be recorded in the Land Records of the City by the Capital Provider, with a copy of the Assessment Payment Schedule attached thereto as an exhibit.

(d) C-PACE Payments. The C-PACE Loan is due and payable to the Capital Provider as set forth in the Assessment Payment Schedule and remitted as follows:

Once the C-PACE Loan, including all accrued interest (both current and delinquent), late fees, other types of fees, penalties, collection costs and Program Fees, has been satisfied and paid in full, Capital Provider and the City, acting at the request and direction of Capital Provider (which shall certify such payment in full to the City), shall execute a joint release of the C-PACE Lien Certificate, and the Capital Provider shall record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the City.

(e) Remittance of C-PACE Payments to Capital Provider: The C-PACE Loan shall be serviced by the Capital Provider, and Property Owner's C-PACE Payments shall be paid directly to its Capital Provider. The foregoing notwithstanding, if for any reason Property Owner's C-PACE Payments are payable to the Program Administrator, then the Program Administrator receiving such C-PACE Payments shall remit all such payments to the Capital Provider within thirty (30) days of receipt, subject, if applicable, to the deduction and remittance of the Program Fees to the Program Administrator as set forth in Section 3(b), above, the C-PACE Documents and the Program Guidelines.

(f) Maintenance of Assessment. The City agrees to maintain and continue the C-PACE Lien on the Property for the benefit of Capital Provider until the C-PACE Loan, including all principal, interest, fees, other types of fees, penalties, collection costs and Program Fees and other sums due, is paid in full.

(g) Assignment. Capital Provider shall have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider by the execution, delivery and recordation of a C-PACE Assignment (CP) in the Land Records, provided all of the following conditions are met:

- (1) The C-PACE Assignment (CP) is made pursuant to the requirements of the Ordinance and the Program Guidelines;
- (2) The Program Administrator and Property Owner are notified in writing of the assignment or transfer and provided the address where future C-PACE Payments should be mailed, either at closing, if the assignment occurs then, or at least thirty (30) days before the next Payment is due according to the Assessment Payment Schedule; and

- (3) The assignee or transferee, by operation of the C-PACE Assignment (CP) or otherwise, assumes Capital Provider's obligations under the C-PACE Documents.

Upon written notice to the Program Administrator and Property Owner of an assignment or transfer of the right to receive the C-PACE Payments that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under the C-PACE Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C-PACE Lien that does not meet all of these conditions is void.

(h) Lien Priority and Enforcement. Pursuant to the C-PACE Act, the Ordinance and the Program Guidelines:

- (1) Delinquent Payments on the C-PACE Loan will incur interest and penalties as set forth in the C-PACE Documents.
- (2) The C-PACE Lien, together with any penalties and interest thereon:
 - (i) has the same priority status as a lien for City real estate taxes;
 - (ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the Land Records until the financing secured by the C-PACE Lien and any penalties and interest are paid in full;
 - (iii) shall run with the land, and notwithstanding Va. Code Sec. 58.1-3967, any portion of the C-PACE Lien that has not yet become due under the C-PACE Documents is not eliminated by the foreclosure of: (i) a City property tax lien, or (ii) the lien for any past due portion of the C-PACE Loan.
 - (iv) In the event of a sale or transfer of the Property by Property Owner, the obligation for the C-PACE Lien and Property Owner's obligations under the C-PACE Documents will be assumed by and transferred to the succeeding owner.
- (3) In the event of Property Owner's default under the terms of the C-PACE Documents, the City may proceed as set forth in the C-PACE Documents through either an action at law or a bill in equity to enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, reasonable attorneys' fees and costs not to exceed 20% of the amount of the unpaid delinquent payments, and any other costs or expenses of collection, in the same manner that a delinquent tax may be pursued by action at law under the provisions of Virginia Code §§58.1-3953, *et seq.*, or in like manner as the enforcement of a property tax lien against real property under the provisions of Virginia Code §§ 58.1-3965, *et seq.* If the City elects not to enforce the C-PACE Lien, which election shall be made within thirty (30) days of receipt by the City from the

Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City shall, within fifteen (15) days of the City's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Director of Finance, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement; provided, that prior to conducting any aspect of enforcement such legal counsel shall apply to the City Attorney for appointment as special counsel to the City pursuant to section 4.17 of the City Charter. Such legal counsel shall, upon appointment by the City Attorney, have the status of "Special Counsel to the City and its Director of Finance" and possess all the rights and powers of an attorney employed under Va. Code §§ 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to the City or its Director of Finance and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the *Code of Virginia*. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or the Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to the which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act, or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975 and any other right of redemption available to the Property Owner under Virginia law.

(4) Capital Provider agrees to cooperate with the City and its Director of Finance in its enforcement of the C-PACE Lien by providing all necessary documents and information concerning the delinquent C-PACE Loan as requested by the City.

(i) Property Owner's Waiver of Certain Defenses; Confession of Judgment: By

executing this Agreement, Property Owner acknowledges and agrees as follows:

- (1) After the C-PACE Lien Certificate is recorded, Property Owner waives the right to contest the Lien on the basis that the improvements funded with the C-PACE Loan are not Eligible Improvements;
- (2) Property Owner waives all defenses, affirmative or otherwise, to any enforcement or collection action brought as a result of Property Owner's default in the payment of the C-PACE Payments due pursuant to the C-PACE Documents;
- (3) To the extent permitted by the Financing Agreement, Property Owner waives all defenses to the imposition of personal liability for corporate officers as permitted under Section 58.1-3965(F) of the Virginia Code;
- (4) Property Owner shall provide a confession of judgment if requested by the Capital Provider.

(j) Written Contract Required by the C-PACE Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by §15.2-958.3(B)(7) of the C-PACE Act.

(k) Transfer of C-PACE Funded Improvements. Property Owner agrees that all Improvements purchased, constructed, or installed through financing obtained pursuant to the C-PACE Program shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property; provided, however, that if Improvements become obsolete or the Property Owner otherwise determines they need to be replaced with other Improvements of equal or greater value, such Improvements may be removed and other Improvements of equal or greater value installed.

(l) No Cost to City. No provision of this Agreement requires the City to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(m) Term of the Agreement. The term of this Agreement shall commence upon the Effective Date and shall be in full force and effect until the C-PACE Loan has been irrevocably paid in full.

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Property Owner, or any right or remedy of the Capital Provider or the City, Property Owner agrees to indemnify and hold harmless the Capital Provider and the City, their councilmembers, directors, officers, employees, agents, subsidiaries, and affiliates (each, an "Indemnified Party"), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether created by statute or common law, including all costs and expenses, including attorneys' fees, arising from or associated with

this C-PACE Loan transaction. This section shall survive the expiration of the Term of this Agreement.

Section 5 - Miscellaneous Provisions.

(a) Construction. This Agreement is to be construed in accordance with and with reference to the C-PACE Act, the Ordinance, the Locality Agreement and the Program Guidelines.

(b) Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.

(c) Severability. If the C-PACE Act, the Ordinance, the Locality Agreement or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the City or Capital Provider, Property Owner agrees to continue to make the C-PACE Payments required under the C-PACE Documents and agrees to execute any and all documentation to perfect and enforce the C-PACE Loan as required by the City or Capital Provider. The invalidity of any clause, provision, or section of this Agreement shall not affect any remaining clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(e) Notices. All notices, requests, consents and other communications (collectively, “Notices”) shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery services, to the Parties, as follows:

If to the City:

Office of Sustainability
City of Richmond
730 East Broad Street, 8th Floor
Richmond, VA 23219
Attention: Director

And

Chief Administrative Officer’s Office
City of Richmond
900 East Broad Street, 2nd Floor
Richmond, VA 23219
Attention: Chief Administrative Officer

And

City Attorney's Office
City of Richmond
900 East Broad Street, Suite 400
Richmond, VA 23219
Attention: City Attorney

If to the Property Owner:

[Address]

If to the Capital Provider:

[Address]

If to the Program Administrator:

[Address]

All Notices are effective when received.

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the authorized representatives of the Parties.

(g) Applicable Law. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

(h) Forum and Venue Choice. Any and all disputes, claims, and causes of action arising out of or in connection with this C-PACE Program Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in a federal or state court located in the City of Richmond, Virginia. The Property Owner and the Capital Provider accept the personal jurisdiction of any court in which an action is brought pursuant to this C-PACE Program Agreement for purposes of that action and waives all jurisdiction and venue-related defenses to the maintenance of such action.

(i) Successors and Assigns. This Agreement is binding upon and made for the benefit of the Property Owner, the Capital Provider, the City and their respective successors and permitted assigns.

(j) Entire Agreement. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement.

(k) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the City, the Property Owner and the Capital Provider have each caused this Agreement to be executed on the date(s) entered below:

CITY OF RICHMOND, VIRGINIA

By: _____
Name: _____
Title: _____
Date: _____

**DIRECTOR OF FINANCE OF
CITY OF RICHMOND, VIRGINIA**

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

PROPERTY OWNER:
[insert Property Owner's name]

By: _____
Name: _____
Title: _____
Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

CAPITAL PROVIDER:

[insert Capital Provider's name]

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A
Property Description

Exhibit B
Assessment Payment Schedule

(102921611.2)

ATTACHMENT C AS AMENDED

Prepared By/Return To:

_____, Esq.; VSB # _____

[Address of Capital Provider's Atty]

**EXEMPT FROM RECORDATION FEES
PURSUANT TO VA. CODE § 17.1-266**

**NOTICE AND CERTIFICATE OF C-PACE SPECIAL ASSESSMENT LIEN
AND ABSTRACT OF ORDINANCE
Pursuant to Virginia Code §§ 15.2-958.3 and
City of Richmond, Virginia Ordinance No. 2023-152, City Code § 11-195.1**

ASSESSOR OF C-PACE LIEN:
(Index as a Grantor):

The City of Richmond, Virginia
900 East Broad Street
Richmond, VA 23219
("City")

PROPERTY OWNER
(Index as a Grantor):

[INSERT PROPERTY OWNER'S
NAME/ADDRESS]

("Property Owner")

CAPITAL PROVIDER
(Index as a Grantee):

[INSERT CAPITAL PROVIDER'S
NAME/ADDRESS]

("Capital Provider")

REAL PROPERTY:

[_____] acres of land, more or less, located at
[INSERT REAL PROPERTY ADDRESS], more
particularly described on **Exhibit A** attached hereto
and incorporated herein ("Property")

TAX MAP NO. & [G]PIN:

Tax Map No.: _____

[G]PIN: _____

**CATEGOR[Y][IES] OF ELIGIBLE
IMPROVEMENTS (SEE VA. CODE
§ 15.2-958.3.A):**

CLAUSE(S) NO. [__]

**AMOUNT OF SPECIAL
ASSESSMENT LEVIED AGAINST
PROPERTY:**

\$ _____

**DATE LEVIED AGAINST
PROPERTY:**

[_____]

NOTICE: IN ACCORDANCE WITH VIRGINIA CODE § 15.2-958.3, THIS INSTRUMENT PROVIDES FOR THE LEVYING OF A SPECIAL ASSESSMENT AGAINST THE PROPERTY AND MAY IMPACT FUTURE OWNERS OF THE PROPERTY AND HOLDERS OF OTHER INTERESTS IN THE PROPERTY, AS DESCRIBED HEREIN.

1. On [Ordinance Adoption Date], pursuant to Virginia Code §15.2-958.3 (“**C-PACE Act**”), the City Council of the City amended and re-ordained the City’s Commercial Property Assessed Clean Energy (C-PACE) Ordinance (“**Ordinance**”), authorizing the levy of a voluntary special assessment lien against any real property located within the City benefitting from Eligible Improvements financed with C-PACE Loans. A full copy of the Ordinance may be found in City Code Chapter 11, Article VIII of the City Code (Sections 11-190.1, *et seq.*). The capitalized terms used in this Notice and Certificate of C-PACE Special Assessment Lien (“**Certificate**”) shall have the same meanings as set forth in the Ordinance at the time of this Certificate’s signing. In accordance with the C-PACE Act and the Ordinance, and at the request of the above-mentioned Property Owner, the City hereby levies a C-PACE Lien in the amount of [\$_____] against the Property, for the purpose of securing and ensuring the repayment of the C-PACE Loan.

2. The City, acting through its Director of Finance, Property Owner and Capital Provider have entered into a C-PACE Program Agreement dated [_____, 20__], that contains terms and conditions for participation in the C-PACE Program, and Property Owner, as borrower, has entered into a Financing Agreement with Capital Provider, providing for the C-PACE Loan to pay for [a portion of] the cost of the construction and installation of the above-mentioned Eligible Improvements on the Property, which documents require repayment of the C-PACE Loan over a [_____] year repayment period, at an annual interest rate of [_____] %, in accordance with the assessment payment schedule attached hereto as **Exhibit B** (“**Assessment Payment Schedule**”). [There are no C-PACE Loan prepayment restrictions or prepayment fees due in connection with the repayment of the C-PACE Loan.][Any C-PACE Loan prepayment restrictions or prepayment fees due in connection with the repayment of the C-PACE Loan are contained in the C-PACE Program Agreement.] The C-PACE Program Agreement, the Financing Agreement, this Certificate, and any other documents, agreements, and/or instruments executed in connection with the C-PACE Loan and/or C-PACE Lien constitute the “**C-PACE Documents**.”

3. Property Owner or its then successor-in-title to the Property shall make C-PACE Payments to Capital Provider (or Capital Provider’s designee) in the amounts and at the times set forth on the Assessment Payment Schedule. If any Loan Payment is not paid when it becomes due and payable, all accrued interest (both current and delinquent), late fees, other types of fees,

penalties, collection costs and Program Fees shall accrue in accordance with the provisions of the C-PACE Documents. Once the C-PACE Loan, including all accrued interest (both current and delinquent), late fees, other types of fees, penalties, collection costs and Program Fees, has been satisfied and paid in full, Capital Provider and the City, acting at the request and direction of Capital Provider (which shall certify such payment in full to the City), shall execute a joint release of the C-PACE Lien and this Certificate, and the Capital Provider shall record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the City.

4. Until the C-PACE Loan is paid in full, Property Owner and each subsequent successor-in-title to the Property assumes and agrees to perform all the obligations and covenants set forth in the C-PACE Documents. Upon any conveyance of the Property by Property Owner, or a successor-in-title to the Property, the transferor of the Property shall be relieved of all liability and obligation to pay the C-PACE Payments incurred after the date of transfer, and the transferee of the Property shall thereafter be liable for paying the C-PACE Payments on and after the transfer date.

5. This Certificate constitutes a lien on the Property and is filed pursuant to the provisions of the C-PACE Act, the Ordinance and the C-PACE Documents, to evidence the C-PACE Lien. Upon recordation of this Certificate in the Land Records, this C-PACE Lien shall be enforceable as set forth in the C-PACE Act and the Ordinance, and its validity may not be contested. The C-PACE Lien for unpaid installments of the C-PACE Loan (including all accrued interest (both current and delinquent), late fees, other types of fees, penalties and collection costs and Program Fees) shall attach to the Property in the same manner and with the same priority as a lien for delinquent real property taxes and shall have priority over any previously recorded lien, mortgage or deed of trust, as evidenced by the recordation of a Lender Consent (for each previously recorded lien, mortgage or deed of trust) immediately after the recordation of this Certificate. At any time hereafter, only the lien of the then-current C-PACE Payment and any Delinquent Payments shall constitute a lien on the Property on par with the real property tax lien. If the Property Owner or other entity subdivides the Property, the C-PACE Lien and its requisite payments will be the joint and several obligations of all the parcels that the subdivision creates, without allocation, unless the subdivision documents, approved in writing by the Capital Provider, provide otherwise.

6. Recording this Certificate shall provide notice of the C-PACE Lien on the Property to any purchaser of, or creditor acquiring a lien on the Property, and such purchaser or creditor shall be deemed to have had notice of the C-PACE Lien. This C-PACE Lien and all rights, benefits, burdens, and obligations under this Certificate and the C-PACE Documents are covenants running with the land, and (a) shall run with the land for the benefit of Capital Provider and constitute an encumbrance on the Property until paid in full and released of record, and (b) shall bind Property Owner and all subsequent successors-in-title to the Property, as if the C-PACE Loan, the C-PACE Lien, and the Loan Documents were expressly assumed by any successor-in-title. If there is a tax sale of the Property because of enforcement proceedings, any portion of the C-PACE Lien that has not yet become due is not eliminated by tax sale or foreclosure of a property tax lien.

7. In the event of Property Owner's default under the terms of the C-PACE Documents, the City, acting by and through the Director of Finance, may enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, reasonable attorneys' fees and costs not to exceed 20% of the amount of the unpaid delinquent payments, and any other costs or expenses of collection, in the same manner that a delinquent tax may be pursued by action at law under the provisions of Virginia Code §§58.1-3953, *et seq.*, or in like manner as the enforcement of a property tax lien against real property under the provisions of Virginia Code §§ 58.1-3965, *et seq.* If the City elects not to enforce the C-PACE Lien, which election shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City shall, within fifteen (15) days of the City's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Director of Finance, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement; provided, that prior to conducting any aspect of enforcement such legal counsel shall apply to the City Attorney for appointment as special counsel to the City pursuant to section 4.17 of the City Charter. Such legal counsel shall, upon appointment by the City Attorney, have the status of "Special Counsel to the City and its Director of Finance" and possess all the rights and powers of an attorney employed under Va. Code §§ 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to the City or its Director of Finance and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the *Code of Virginia*. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or the Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to the which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act, or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975 and any other right of redemption available to the Property Owner under Virginia law.

Capital Provider agrees to cooperate with the City and its Director of Finance in its enforcement of the C-PACE Lien by providing all necessary documents and information concerning the delinquent C-PACE Loan as requested by the City.

8. In accordance with § 15.2-958.3(F)(1)(ii) of the C-PACE Act, Property Owner hereby certifies: (a) Property Owner is current on payments on all loans secured by a mortgage or deed of trust lien on the Property and on property tax payments, (b) Property Owner is not insolvent or in bankruptcy proceedings, and (c) Property Owner's title to the Property is not in dispute.

(SIGNATURE PAGES TO FOLLOW)

On this ___ day of _____, 20___, the City of Richmond, Virginia, hereby levies a C-PACE Lien against the Property in the amount set forth in this Notice and Certificate of C-PACE Special Assessment Lien.

CITY: THE CITY OF RICHMOND, VIRGINIA

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA;
CITY OF RICHMOND, TO-WIT:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of the City of Richmond, Virginia, a corporate and body politic and municipal corporation of the Commonwealth of Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 20__.

Notary Public

My commission expires: _____
Notary registration number: _____

By executing this Certificate on this ____ day of _____, 20____, Property Owner hereby irrevocably requests and consents to the levy of the C-PACE Lien against the Property in the amount set forth in this Notice and Certificate of C-PACE Special Assessment Lien.

PROPERTY OWNER:

[NAME OF PROPERTY OWNER],
a [STATE] [ENTITY TYPE]

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA:
CITY/COUNTY OF _____:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 20____.

Notary Public

My commission expires: _____
Notary registration number: _____

IN WITNESS WHEREOF, Capital Provider has duly executed this Notice and Certificate of C-PACE Special Assessment Lien by its duly authorized representative as of this ____ day of _____, 20__.

CAPITAL PROVIDER:

_____,
a [STATE] [ENTITY TYPE]

By: _____ (SEAL)

Name: _____

Title: _____

COMMONWEALTH/STATE OF _____:

CITY/COUNTY OF _____:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 20__.

Notary Public

My commission expires: _____

Notary registration number: _____

Exhibit A

Legal Description of Property

[See attached.]

Exhibit B

Assessment Payment Schedule

[See attached.]

(102928711.2)

ATTACHMENT D AS AMENDED

Prepared By/Return To:
_____, Esq.; VSB # _____
[Address of Capital Provider's Atty]

SEE INSTRUMENT NO. _____
FOR ORIGINAL LIEN CERTIFICATE

**AMENDED AND RESTATED NOTICE AND CERTIFICATE OF C-PACE SPECIAL
ASSESSMENT LIEN**
Pursuant to Virginia Code § 15.2-958.3 and
City Code of Richmond, Virginia Sections §§ 11-195.1(b) and 11-195.1(d)

ASSESSOR OF C-PACE LIEN: The City of Richmond, Virginia
900 E. Broad St.
Richmond, VA 23219
(The "City")

PROPERTY OWNER: [INSERT PROPERTY OWNER'S
NAME/ADDRESS]

(**"Property Owner"**)

CAPITAL PROVIDER: [INSERT CAPITAL PROVIDER'S
NAME/ADDRESS]

(**"Capital Provider"**)

REAL PROPERTY: [_____] acres of land, more or less, located at
[INSERT REAL PROPERTY ADDRESS], more
particularly described on **Exhibit A** attached hereto
and incorporated herein (**"Property"**)

TAX MAP NO. & [G]PIN: Tax Map No.: _____
[G]PIN: _____

**CATEGOR[Y][IES] OF ELIGIBLE
IMPROVEMENTS (SEE VA. CODE
§ 15.2-958.3.A):** **CLAUSE(S) NO. [__]**

AMOUNT OF ORIGINAL SPECIAL ASSESSMENT LEVIED AGAINST PROPERTY: \$ _____

[AMOUNT OF AMENDED SPECIAL ASSESSMENT LEVIED AGAINST PROPERTY: \$ _____]

DATE ORIGINAL ASSESSMENT LEVIED AGAINST PROPERTY: [_____, 20__]

DATE AMENDED ASSESSMENT LEVIED AGAINST PROPERTY: [_____, 20__]

NOTICE: IN ACCORDANCE WITH VIRGINIA CODE §15.2-958.3, THIS INSTRUMENT PROVIDES FOR THE AMENDMENT AND RESTATEMENT OF A SPECIAL ASSESSMENT LIEN PREVIOUSLY LEVIED AGAINST THE PROPERTY AND MAY IMPACT FUTURE OWNERS OF THE PROPERTY AND HOLDERS OF OTHER INTERESTS IN THE PROPERTY, AS DESCRIBED HEREIN. INTERESTED PARTIES ARE ADVISED TO CONTACT THE CITY FOR MORE INFORMATION.

THIS AMENDED AND RESTATED NOTICE AND CERTIFICATE OF C-PACE SPECIAL ASSESSMENT LIEN (“**Amended Certificate**”) is made by and among the City, acting through its Director of Finance, Property Owner and Capital Provider (collectively, the “**Parties**”) and shall be effective upon its recordation in the Land Records. All capitalized terms not expressly defined herein shall have the meanings ascribed to such terms in the original Notice and Certificate of C-PACE Special Assessment Lien referenced above (“**Existing Lien Certificate**”), which this document modifies, or in the Ordinance (defined below), as it may have been amended to date.

WHEREAS, the Parties have agreed to modify certain terms of the Property Owner’s C-PACE Loan, making it necessary and desirable to amend and restate the Existing Lien Certificate herein.

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. On [Ordinance Adoption Date], pursuant to Virginia Code §15.2-958.3 (“**C-PACE Act**”), the City Council of the City amended and re-ordained the City’s Commercial Property Assessed Clean Energy (C-PACE) Financing Ordinance (“**Ordinance**”) authorizing the levy of a voluntary special assessment lien against Eligible Properties located within the City benefitting from Eligible Improvements financed with C-PACE Loans. A full copy of the Ordinance may be found in City Code Chapter 11, Article VIII of the City Code (Sections 11-190.1, *et seq.*). In accordance with the C-PACE Act and the Ordinance, and at the request of the above-mentioned Property Owner, the City, (a) on _____, 20__, levied a C-PACE Lien in the amount of [\$_____] against the Property, for the purpose of securing and ensuring the repayment of

the original C-PACE Loan, and (b) hereby amends and restates the aforesaid C-PACE Lien, modifying the C-PACE Lien against the Property [to be in the amount of \$_____][*describe other modification*], for the continued purpose of securing and ensuring the repayment of the C-PACE Loan, as modified to date.

2. The City, acting through its Director of Finance, Property Owner and Capital Provider entered into a C-PACE Program Agreement dated _____, 20__ (“**Existing Program Agreement**”), that contained terms and conditions for participation in the C-PACE Program, and Property Owner, as borrower, entered into a Financing Agreement with Capital Provider dated _____, 20__ (“**Existing Financing Agreement**”), providing for the C-PACE Loan to pay for [a portion of] the cost of the construction and installation of the above-mentioned Eligible Improvements on the Property, which documents required repayment of the C-PACE Loan over a [_____] year repayment period, at an annual interest rate of [_____] %, in accordance with the assessment payment schedule attached as Exhibit B to the Existing Lien Certificate. Contemporaneously herewith, the City, acting through its Director of Finance, Property Owner and Capital Provider have modified the terms of the C-PACE Loan [by entering into an Amended and Restated Program Agreement dated _____, 20__ (“**A&R Program Agreement**”), and an Amended and Restated Financing Agreement dated _____, 20__ (“**A&R Financing Agreement**”) with Capital Provider,]for the purpose(s) of:

[_____].
Such modifications require the amendment and restatement of the assessment payment schedule attached as Exhibit B to the Existing Lien Certificate in the form of the assessment payment schedule attached as Exhibit B to this Amended Certificate (the “**Assessment Payment Schedule**”). [There are no C-PACE Loan prepayment restrictions and/or prepayment fees due in connection with the repayment of the C-PACE Loan, as modified.][The C-PACE Loan prepayment restrictions and/or prepayment fees due in connection with the repayment of the C-PACE Loan are contained in the A&R Program Agreement.] The A&R Program Agreement, the A&R Financing Agreement, this Amended Certificate, documents, agreements, and/or instruments executed in connection with the C-PACE Loan, Existing Program Agreement, Existing Financing Agreement, Existing Lien Certificate, this Certificate and any other documents amending the foregoing listed documents constitute the “C-PACE Documents.”

3. Property Owner and/or its successors-in-title to the Property shall make C-PACE Payments to Capital Provider (or Capital Provider’s designee) in the amounts and at the times set forth on the Assessment Payment Schedule. If any C-PACE Payment is not paid when it becomes due and payable, all accrued interest (both current and delinquent), fees of any nature, penalties, collection costs and Program Fees shall accrue in accordance with the provisions of the C-PACE Documents. Once the C-PACE Loan, including all accrued interest (both current and delinquent), fees of any nature, penalties, collection costs and Program Fees, has been satisfied and paid in full, Capital Provider and the City acting at the request and direction of Capital Provider (which shall certify such payment in full to the City), shall execute a joint release of the C-PACE Lien and this Certificate, and the Capital Provider shall record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the City.

4. Until the C-PACE Loan is paid in full, Property Owner and each subsequent successor-in-title to the Property assumes and agrees to perform all the obligations and covenants set forth in the C-PACE Documents. Upon any conveyance of the Property by Property Owner and/or its successors-in-title to the Property, the transferor of the Property shall be relieved of all liability and obligation to pay the C-PACE Payments incurred after the date of transfer, and the transferee of the Property shall thereafter be liable for paying the C-PACE Payments on and after the transfer date.

5. This Amended Certificate constitutes a lien on the Property and is filed by the Capital Provider pursuant to the provisions of the C-PACE Act, the Ordinance and the C-PACE Documents, to evidence the C-PACE Lien. Upon recordation of this Amended Certificate in the Land Records, this amended and restated C-PACE Lien shall be enforceable as set forth in the C-PACE Act and the Ordinance, and its validity may not be contested. The C-PACE Lien for unpaid installments of the C-PACE Loan (including all accrued interest (both current and delinquent), fees of any nature, penalties and collection costs and Program Fees) shall attach to the Property in the same manner and with the same priority as a lien for delinquent real property taxes and shall have priority over any previously recorded lien, mortgage or deed of trust, as evidenced by the recordation of a Lender Consent (for each previously recorded lien, mortgage or deed of trust) immediately after the recordation of the Existing Lien Certificate. At any time hereafter, only the lien of the then-current C-PACE Payment and any Delinquent Payments shall constitute a lien on the Property on par with the real property tax lien. If the Property Owner or other entity subdivides the Property, the Assessment Lien and its requisite payments will be the joint and several obligations of all the parcels that the subdivision creates, without allocation, unless the subdivision documents, approved in writing by the Capital Provider, provide otherwise.

6. Recording this Amended Certificate shall provide notice of the amended and restated C-PACE Lien on the Property until paid in full to any purchaser of, or creditor acquiring a lien on the Property, and such purchaser or creditor shall be deemed to have had notice of the amended and restated C-PACE Lien. This C-PACE Lien, as amended and restated, and all rights, benefits, burdens, and obligations under this Amended Certificate and the C-PACE Documents continue to be covenants running with the land, and (a) shall run with the land for the benefit of Capital Provider and constitute an encumbrance on the Property until paid in full and released of record, and (b) shall bind Property Owner and all subsequent successors-in-title to the Property, as if the C-PACE Loan, the C-PACE Lien, and the C-PACE Documents were expressly assumed by any successor-in-title. If there is a tax sale of the Property because of enforcement proceedings, any portion of the C-PACE Lien that has not yet become due is not eliminated by tax sale or foreclosure of a property tax lien.

7. In the event of Property Owner's default under the terms of the C-PACE Documents, the City, acting by and through the Director of Finance, may enforce the C-PACE Lien, as amended and restated, for the amount of the Delinquent Payments, late fees, penalties, interest, reasonable attorneys' fees and costs not to exceed 20% of the amount of the unpaid delinquent payments, and any other costs or expenses of collection, in the same manner that a delinquent tax may be pursued by action at law under the provisions of Virginia Code §§58.1-3953, *et seq.*, or in like manner as the enforcement of a property tax lien against real property under the provisions of Virginia Code §§ 58.1-3965, *et seq.* Capital Provider agrees to cooperate

with the City and its Director of Finance in its enforcement of the amended and restated C-PACE Lien by providing all necessary documents and information concerning the delinquent C-PACE Loan as requested by the City. If the City elects not to enforce the C-PACE Lien, which election shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City shall, within fifteen (15) days of the City's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Director of Finance, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement; provided, that prior to conducting any aspect of enforcement such legal counsel shall apply to the City Attorney for appointment as special counsel to the City pursuant to section 4.17 of the City Charter. Such legal counsel shall, upon appointment by the City Attorney, have the status of "Special Counsel to the City and its Director of Finance" and possess all the rights and powers of an attorney employed under Va. Code §§ 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to the City or its Director of Finance and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or the Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act, or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975 and any other right of redemption available to the Property Owner under Virginia law.

8. In accordance with § 15.2-958.3(F)(1)(ii) of the C-PACE Act, Property Owner hereby certifies: (a) Property Owner is current on payments on loans secured by a mortgage or deed of trust lien on the Property and on property tax payments, (b) Property Owner is not insolvent or in bankruptcy proceedings, and (c) Property Owner's title to the Property is not in dispute.

(SIGNATURE PAGES TO FOLLOW)

On this ___ day of _____, 20___, the City of Richmond, Virginia, hereby amends and restates the previously levied C-PACE Lien against the Property in the amount set forth in this Amended and Restated Notice and Certificate of C-PACE Special Assessment Lien.

CITY:

THE CITY OF RICHMOND, VIRGINIA

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA;
CITY OF RICHMOND:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of the City of Richmond, Virginia, a corporate and body politic and municipal corporation of the Commonwealth of Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 20__.

Notary Public

My commission expires: _____

Notary registration number: _____

By executing this Certificate on this ____ day of _____, 20____, Property Owner hereby irrevocably consents to the levy of the C-PACE Lien against the Property in the amount set forth in this Amended and Restated Notice and Certificate of C-PACE Special Assessment Lien.

PROPERTY OWNER:

[NAME OF PROPERTY OWNER],
a [STATE] [ENTITY TYPE]

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA;
CITY/COUNTY OF _____:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 20____.

Notary Public

My commission expires: _____
Notary registration number: _____

IN WITNESS WHEREOF, Capital Provider has duly executed this Amended and Restated Notice and Certificate of C-PACE Special Assessment Lien by its duly authorized representative as of _____, 20__.

CAPITAL PROVIDER:

_____,
a [STATE] [ENTITY TYPE]

By: _____ (SEAL)

Name: _____

Title: _____

COMMONWEALTH/STATE OF _____:

CITY/COUNTY OF _____:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 20__.

Notary Public

My commission expires: _____

Notary registration number: _____

Exhibit A

Legal Description of Property

[See attached.]

Exhibit B

Assessment Payment Schedule

[See attached.]

(100800690.2)

ATTACHMENT E AS AMENDED

Prepared By/Return To:

_____, Esq.; VSB # _____

[Address of Assignee’s Attorney]

C-PACE LIEN ASSIGNMENT (CP)

CURRENT PROPERTY OWNER

(Index as a Grantor): _____, a _____

ASSIGNOR (Index as a Grantor): _____, a _____

ASSIGNEE (Index as a Grantee): _____, a _____

[INSERT ASSIGNEE’S MAILING ADDRESS]

KNOW ALL PERSONS BY THESE PRESENTS, that [ASSIGNING CAPITAL PROVIDER NAME] (“Assignor”), a _____, under authority of (1) Paragraphs C and E of Section 15.2-958.3 of the Code of Virginia (1950), as amended (the “Virginia Code”), (2) Section 11-194.1(k) of the Code of the City of Richmond, Virginia (the “City”) and (3) a C-PACE Program Agreement dated _____, 20____, among the City, [ORIGINAL PROPERTY OWNER NAME] (“Property Owner”) and [ORIGINAL CAPITAL PROVIDER NAME], and in consideration of One Dollar (\$1.00) and other valuable consideration paid to Assignor by _____, a _____ (“Assignee”), the receipt of which is hereby acknowledged, hereby quitclaims, grants, bargains, sells, conveys, assigns, transfers and sets over unto Assignee, without any warranties, covenants or recourse, all of its right, title and interest in and to that certain C-PACE special assessment lien and the debts secured thereby, together with interest, delinquent interest, late fees, penalties, Program Fees and collection costs (including reasonable attorneys’ fees and costs not to exceed 20% of the amount of the unpaid delinquent payments) payable in connection therewith as may be provided by law, levied and recorded by or on the behalf of the City in the Land Records as Instrument No. _____, on _____, 20____, on the property described therein on **Exhibit A** attached thereto (collectively, the “C-PACE Lien”), to have and to hold the same unto said Assignee, its successor and assigns forever.

Capitalized terms used but not defined in this C-PACE Lien Assignment (CP) (this “Assignment”) shall have the meaning ascribed to them in Chapter 11, Article VIII of the Code of the City. This Assignment constitutes a “C-PACE Assignment (CP)” as such term is defined in Section 11-191.1 of the Code of the City.

By execution of this Assignment, Assignee assumes all of the rights at law or in equity, obligations, powers and duties previously assigned to as Assignor with respect to enforcing the C-PACE Lien, with regard to precedence and priority of such Lien and the accrual of interest,

delinquent interest, late fees, penalties, Program Fees and collection costs (including reasonable attorneys' fees and costs not to exceed 20% of the amount of the unpaid delinquent payments), and other costs and expenses of collection, payable in connection therewith as may be provided by law, pursuant to Virginia Code Section 15.2-958.3, as amended.

This Assignment by Assignor is absolute and irrevocable and Assignor shall retain no interest, reversionary or otherwise, in the C-PACE Lien. The foregoing notwithstanding, however, neither Assignor's assignment of the C-PACE Lien to Assignee, nor any future reassignment of the C-PACE Lien to future holders of the C-PACE Loan secured by the C-PACE Lien, shall in any way change the status of the C-PACE Lien as a special assessment lien imposed by the City, and the C-PACE Lien shall continue to be enforceable by the [INCLUDE IF CITY HAS NOT SIGNED A C-PACE LIEN ASSIGNMENT (LOCALITY): City's Director of Finance] [OTHERWISE INCLUDE: then-current holder of the C-PACE Lien in the same manner as the City enforces its lien for real property taxes], per the terms of the C-PACE Program Agreement, the C-PACE Lien and the other C-PACE Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has hereunto set [his/her] hand and seal this ____ day of _____, 20__.

ASSIGNOR: _____

By: _____ (SEAL)
Name: _____
Title: _____

STATE/Commonwealth of _____;
CITY/COUNTY OF _____, TO-WIT:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of _____, a _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. (S)He is personally known to me or provided a _____ as identification.

GIVEN under my hand and seal this _____ day of _____, 20__.

Notary Public

My commission expires: _____
Notary registration number: _____ (if in Virginia)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(102935680.2)

ATTACHMENT F AS AMENDED

Prepared By/Return To:

_____, Esq.; VSB # _____

[Address of Assignee’s Attorney]

**EXEMPT FROM RECORDATION FEES
PURSUANT TO VA. CODE § 17.1-266**

C-PACE LIEN ASSIGNMENT (LOCALITY)

CURRENT PROPERTY OWNER

(Index as a Grantor): _____, a _____

ASSIGNOR (Index as a Grantor): City of Richmond, a municipal corporation of the Commonwealth of Virginia

ASSIGNEE (Index as a Grantee): _____, a _____
[INSERT ASSIGNEE’S MAILING ADDRESS]

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia (the “City”), duly authorized under (1) Paragraphs C and E of Section 15.2-958.3 of the Code of Virginia (1950), as amended (the “Virginia Code”), (2) Chapter 11, Article VIII of the Code of the City of Richmond, Virginia, and (3) a C-PACE Program Agreement dated _____, 20____, among the City, [PROPERTY OWNER NAME] (“Property Owner”) and [CAPITAL PROVIDER NAME] (“Assignee”), in consideration of One Dollar (\$1.00) and other valuable consideration paid to the City by Assignee, the receipt of which is hereby acknowledged, hereby quitclaims, grants, bargains, sells, conveys, assigns, transfers and sets over unto Assignee, without any warranties, covenants or recourse, all of its right, title and interest in and to that certain C-PACE special assessment lien and the debts secured thereby, together with interest, delinquent interest, late fees, penalties, Program Fees and collection costs (including attorneys’ fees and costs) payable in connection therewith as may be provided by law, levied and recorded by or on the behalf of the City in the Land Records [as Instrument No. _____, on _____, 20____][immediately prior hereto], on property owned on the date hereof by Property Owner and described on **Exhibit A** attached thereto (collectively, the “C-PACE Lien”), to have and to hold the same unto said Assignee, its successor and assigns forever.

Capitalized terms used but not defined in this C-PACE Lien Assignment (Locality) (this “Assignment”) shall have the meaning ascribed to them in Chapter 11, Article VIII of the Code of the City. This Assignment constitutes a “C-PACE Assignment (Locality)” as such term is defined in Sec. 11-191.1 of the Code of the City.

By execution of this Assignment, the City assigns to Assignee, and Assignee assumes, all of the rights at law or in equity, obligations, powers, and duties as the City would have with respect to enforcing the C-PACE Lien if the C-PACE Lien had not been assigned, with regard to precedence and priority of such Lien, the accrual of interest, delinquent interest, late fees, penalties and Program Fees, and the ability to recover reasonable attorneys' fees and costs not to exceed 20% of the amount of the unpaid delinquent payments, payable in connection therewith as may be provided by law, pursuant to Virginia Code Section 15.2-958.3, as amended except that the Assignee and its successors, and assigns shall comply with the provisions of Section 11-195.1(e) of the Code of the City of Richmond, Virginia relating to the appointment of special counsel to the City and its Director of Finance where that section is applicable.

This Assignment by the City is absolute and irrevocable and the City shall retain no interest, reversionary or otherwise, in the C-PACE Lien, except as provided above with regard to the appointment of special counsel. The foregoing notwithstanding, however, neither the City's assignment of the C-PACE Lien to Assignee, nor any future reassignment of the C-PACE Lien to future holders of the C-PACE Loan secured by the C-PACE Lien, shall in any way change the status of the C-PACE Lien as a special assessment lien imposed by the City, and the C-PACE Lien shall continue to be enforceable by the then-current holder of the C-PACE Lien in the same manner as the City enforces its lien for real property taxes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ___ day of _____, 20__.

ASSIGNOR:

THE CITY OF RICHMOND, VIRGINIA

By: _____
Name: _____
Title: _____

(SEAL)

ATTEST:

City Clerk

Approved as to Form:

[Assistant/Deputy] City Attorney

COMMONWEALTH OF VIRGINIA;
CITY OF RICHMOND, TO-WIT:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of the City of Richmond, Virginia, a corporate and body politic and governmental subdivision of the Commonwealth of Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. (S)He is personally known to me or provided a _____ as identification.

GIVEN under my hand and seal this _____ day of _____, 20__.

Notary Public

My commission expires: _____

Notary registration number: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(102935235.2)