

PACE CAPITAL PROVIDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) CAPITAL PROVIDER CONTRACT (this “Capital Provider Contract”) is made as of the [REDACTED] day of [REDACTED], 20[REDACTED], by and between [REDACTED] (“Local Government”) and [REDACTED] (together with its successors and assigns, “Capital Provider”).

RECITALS

A. The Municipal Property Assessed Clean Energy Act, Alaska Statutes 29.55, as amended from time to time (the “PACE Act”), authorizes the governing body of a local government to establish an energy improvement assessment program and designate a region within the local government’s jurisdiction within which the local government may enter into written contracts with record owners of existing privately owned commercial or industrial property to impose assessments on the property to finance the installation or modification of permanent improvements fixed to the property to achieve reduced energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature.

B. Local Government has established a program under the PACE Act (the “PACE Program”) pursuant to an ordinance dated [REDACTED], adopted by the [REDACTED] (the “Ordinance”), and a resolution dated, [REDACTED], (the “Resolution”), collectively “the [REDACTED] PACE Legislation”). The Local Government is authorized to enter into the Assessment, Owner Contract and Capital Provider Contract described herein, and has designated the entire territory within the [MUNICIPALITY/BOROUGH] as a region (“Region”) within which the Local Government and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Property Owner is the legal and record owner of the qualified real property, located within the Region at [PROPERTY ADDRESS], [CITY], Alaska and more particularly described in Exhibit A, attached hereto and incorporated herein (the “Property”). Property Owner applied to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to reduce energy consumption or demand, and which are or will be fixed to the Property as qualified improvements, as set forth in the PACE Act and PACE Program (the “Qualified Improvements”). The cost of installation or modification of such Qualified Improvements and all related eligible costs pursuant to the PACE Act and otherwise described in the PACE Program have been determined to be a qualified energy improvement project and collectively referred to herein as the “Project”.

D. Property Owner and Local Government have entered into a written contract as required by Section 29.55.105 of the PACE Act, a copy of which is attached hereto as Exhibit B and made a part hereof (the “Owner Contract”), in which Property Owner has requested that Local Government impose an assessment (the “Assessment”) on the Property as set forth in the Notice of Contractual Assessment Lien to be filed in the property records of the recording district of [MUNICIPALITY/BOROUGH], Alaska (the “Notice of Contractual Assessment Lien”), a copy of which is attached to the Owner Contract as Exhibit B, to repay the financing of such Project.

E. The financing for the Project (the “Financing”) will be provided to Property Owner by Capital Provider in accordance with financing documents which are described on Exhibit C attached hereto and made a

part hereof (the “Financing Documents”). Such Financing includes only those costs and fees for which an assessment may be imposed under the PACE Act and PACE Program. This Capital Provider Contract is entered into between Local Government and Capital Provider, as required by Section 29.55.105 of the PACE Act, to authorize the Local Government to service the Assessment to provide for repayment of the Financing.

F. Pursuant to Section 29.55.105(a)(2) of the PACE Act, Local Government may contract with the governing body of another taxing unit to perform the duties of the Local Government relating to collection of assessments imposed by the Local Government under this section (the “Agent”).

AGREEMENT

The parties hereby agree as follows:

1. Maintenance and Enforcement of Assessment. Capital Provider agrees to provide the Financing for the Project in the total amount of \$ [REDACTED], according to the terms set out in the Financing Documents. In consideration for the Financing provided or to be provided by Capital Provider for the Project, and subject to the terms and conditions of this Capital Provider Contract, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Capital Provider until the Financing, all contractual interest, any prepayment premium, additional penalties and interest imposed by the Capital Provider under the Financing Documents according to the Financing Documents, and any statutory penalties, interest, attorney’s fees, or costs accrued in the event of default are paid in full. Local Government will not release the Assessment until which time Capital Provider notifies Local Government that all amounts owing have been paid in full. Upon notice from Capital Provider that all amounts owing have been paid in full, Local Government will execute a release of the Assessment. Thereafter, the Local Government will record the release. Local Government agrees to collect Assessment Installments, as defined here, and to enforce the Assessment against the Property for the benefit of Capital Provider in the event of a payment default by Property Owner in accordance with the provisions set forth in paragraph 6.

2. Installments. The Assessment, including the amount financed and interest, is due and payable in installments (“Assessment Installments”) as set forth in the Notice of Contractual Assessment Lien and the Financing Documents.

3. Assignment of Right to Receive Installments. Capital Provider will have the right to assign or transfer the right to receive the installments of the Assessment, provided all of the following conditions are met:

(a) Local Government [and Agent] are notified in writing of the assignment or transfer and the address to which payment of the future Assessment Installments should be mailed at least 30 days before the next Assessment Installment is due according to the payment schedule included in the Notice of Contractual Assessment Lien and the Financing Documents; and

(b) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Capital Provider’s obligations under this Capital Provider Contract.

(c) Upon written notice to Property Owner, Local Government, [and Agent] of an assignment or transfer of the right to receive payments hereunder that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under this Capital Provider Contract accruing after the date of the assignment assumed by and transferred to such

assignee or transferee and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive payments hereunder that does not meet all of these conditions is void.

4. Financing Responsibility. Capital Provider assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Capital Provider's obligations and responsibilities thereunder.

5. Servicing of Assessment.

(a) Servicing. As of the effective year 20[] and each year thereafter for the term identified in the Notice of Contractual Assessment Lien, the Assessment shall be placed on the Property's tax bill or a stand-alone bill for account # [ENTER PROPERTY ID] by the Local Government or its Agent. Pursuant to the Owner Contract, the Property Owner has agreed that the Assessment will be included on the Property's tax bill or stand-alone bill and agrees to repay all Assessment obligations which are due and payable to the Local Government on the date designated on the Property's tax bill or stand-alone bill for payment of the Assessment Installment. [The Assessment shall include: (1) an application fee paid by Property Owner to Local Government at loan closing, and (2) a recurring administration fee paid by Property Owner to the Local Government.]

(b) Remittances. All amounts collected by Local Government related to an Annual Installment shall be remitted from the Local Government to the Capital Provider within thirty (30) business days of receipt by the Local Government.

6. Lien Priority and Enforcement. As provided in the Owner Contract and Section 29.55.135 of the PACE Act,

(a) Delinquent Assessment Installments will incur interest and penalties in the same manner and in the same amount as delinquent [taxes ; OR assessments] as provided in [AS 29.45.250 ; OR INSERT MUNICIPAL CODE; OR INSERT "the Ordinance"]. In addition to penalties and interest as described herein, which shall be retained by the Capital Provider, Local Government will recover costs and expenses, including attorney fees, in suit to collect a delinquent Assessment Installment in the same manner as in a suit to collect a delinquent property tax.

(b) The Assessment, together with all authorized, penalties and interest thereon,

(1) is a lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the of the property records of [MUNICIPALITY/BOROUGH], until the financing secured by the Assessment and all authorized, penalties and interest are paid in full; and

(2) such lien is prior and paramount to all liens except municipal tax liens and special assessments, pursuant to Section 29.55.135 of the PACE Act.

(c) The lien created by the Assessment runs with the land, and pursuant to Section 29.55.135 of the PACE Act, any portion of the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien. In the event of a sale or transfer of the Property, the obligation for the Assessment and the Property Owner's obligations under the Financing

Documents will without further action by Local Government, be transferred to, and assumed by, the succeeding property owner.

(d) In the event of a default by Property Owner in payment of the Assessment Installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government in the same manner according to AS 29.45.320 – 29.45.470 that a property tax lien against real property may be enforced by a local government.

(e) In a suit to collect a delinquent Assessment Installment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount consistent with a suit to collect a delinquent property tax. Capital Provider shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Assessment Installment.

(f) After the Notice of Contractual Assessment Lien is recorded in the real property records of [MUNICIPALITY/BOROUGH], the lien created by the Assessment may not be contested on the basis that the improvement is not a “Qualified Improvement” or the project is not a “Project” under the terms of the PACE Act or PACE Program.

(g) Local Government agrees to send an annual notice of assessment to the Property Owner with the annual property tax notice each year there is an Assessment lien balance. This notification can be listed on page one of said tax notice or as a separate notification. Pursuant to Alaska Statute 29.45.350 the Capital Provider hereby requests the Local Government send to the Capital Provider a notice of any foreclosure list that includes the Property.

7. Limitations on Local Government’s Actions. Without the prior written consent of Capital Provider, Local Government will not enter into any amendment or modification of or deviation from the Owner Contract. Notwithstanding the responsibilities of Local Government under this Capital Provider Contract, Local Government will not institute any legal action with respect to the Owner Contract, the Assessment, or the assessment lien without the prior written request of Capital Provider.

8. Limitations of Local Government’s Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Capital Provider Contract, and no implied duties on the part of Local Government are to be read into this Capital Provider Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Capital Provider. Local Government may request written instructions for action from Capital Provider and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting. No provisions of this Capital Provider Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. Notwithstanding the foregoing or anything contained herein to the contrary, if Local Government takes title to the Property, Local Government will be obligated to pay any Assessment Installments due or that become due while Local Government holds title to the Property, pursuant to the PACE Act and the Owner Contract.

9. No Personal Liability. The Property Owner acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of any third-party who enters into a contract with the Local Government to provide administrative services for the PACE Program are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

10. Capital Provider's Warranties and Representations. With respect to this Capital Provider Contract, Capital Provider hereby warrants and represents that on the date on which Capital Provider executes this Capital Provider Contract:

(a) Capital Provider is a qualified Capital Provider under the PACE Program and is fully qualified under the PACE Program to enter into this Capital Provider Contract and the Financing Documents;

(b) Capital Provider has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Capital Provider has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government or any agent or employee of Local Government, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

11. Written Contract Required by the PACE Act. This Capital Provider Contract constitutes a written contract between Local Government and Capital Provider, pursuant to Section 29.55.105(b) and 29.55.110(a)(2) of the PACE Act.

12. Construction and Definitions. This Capital Provider Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the Notice of Contractual Assessment Lien, (2) the Owner Contract, (3) the PACE Program, and/or (4) the PACE Act.

13. Binding Effect. This Capital Provider Contract is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

14. Notices. All notices and other communications required or permitted hereunder shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

15. Governing Law. This Capital Provider Contract shall in all respects be governed by and construed in accordance with the laws of the State of Alaska.

16. Entire Agreement. This Capital Provider Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

17. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

18. Counterparts. This Capital Provider Contract may be executed in any number of counterparts, each counterpart may be delivered originally or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

19. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this Capital Provider Contract. The Assessment has been imposed

on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

20. Recitals. The Recitals to this Capital Provider Contract are incorporated into this Capital Provider Contract by this reference as if set forth in their entirety in this Capital Provider Contract.

SIGNATURE PAGE TO PACE CAPITAL PROVIDER CONTRACT [1 OF 2] CAPITAL PROVIDER:

By:

Name:

Title:

Address:

Date:

SIGNATURE PAGE TO PACE CAPITAL PROVIDER CONTRACT [2 OF 2] LOCAL
GOVERNMENT:

By:

Name:

Title:

Address:

Date:

EXHIBIT A: PROPERTY LEGAL DESCRIPTION

EXHIBIT B: OWNER CONTRACT & NOTICE

EXHIBIT C: LIST OF FINANCING DOCUMENTS