Contract between Local Government and Lender

THIS COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENTS ("PACE") LENDER CONTRACT (the "Lender Contract") is made as of the _____ day of _____, _____, by and between _____ ("Local Government") and _____, its representatives, successors, and assigns("Lender").

RECITALS

A. The Commercial Property-Assessed Enhancements Act of Montana ("PACE Act"), Title 90, Chapter 4, Part 13, Montana Code Annotated (MCA), authorizes the governing body of a local government to establish a program and designate a region within the local government's jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of a privately owned commercial or industrial facility, covered multifamily housing facility as defined in Section 90-4-1302, MCA, or agricultural property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand, use renewable energy to generate electricity or reduce the use of nonrenewable energy, and/or to improve a property's public safety or resiliency.

B. Local Government has established a program under the PACE Act pursuant to a Resolution No. ___ dated _____, adopted by the _____ (the "PACE Program"), and has designated Montana Facility Finance Authority ("Authorized Representative") as the representative authorized to provide required notice of the Assessment and enter into the Owner Contract and Lender Contract described herein, and has designated the entire territory within the _____ of _____ jurisdiction as a District ("District") within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of energy conservation projects and public safety and resiliency improvement projects (C-PACE Projects) on the owner's property pursuant to the PACE Program.

C. Property Owner has applied to Authorized Representative to participate in the PACE Program with respect to certain real property located at _____, _____, Montana (the "Property") by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, use renewable energy to generate electricity or reduce the use of nonrenewable energy, and/or to improve a property's public safety or resiliency, and which are or will be fixed to the Property, as defined in Section 90-4-1302, MCA (the "C-PACE Project"). The installation or modification of such project on the Property will be a "C-PACE Project" which satisfies the requirements of Section 90-4-1302, MCA (the "Project").

D. Property Owner and Local Government have entered into a written contract as required by Section 90-4-1304, MCA, a copy of which is attached hereto as Exhibit A 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 Pursuant To Commercial Property Assessed Capital Enhancements Act of Montana to be filed in the in the Office of the Clerk and Recorder of _____, Montana (the "Notice of Contractual Assessment Lien"), a copy of which is attached to the Owner Contract as Exhibit A, to repay the financing of such C-PACE Project. The Property, C-PACE Project, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (the "Financing") will be provided to Property Owner by Lender in accordance with financing documents described in, or copies of which are included as, Exhibit B 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. This Lender Contract is entered into between Local Government and Lender to provide for repayment of the Financing secured by the Assessment under Section 90-4-1307, MCA.

F. As required by Section 90-4-1305(3)(b)(i), MCA, the written consent of each mortgage lien holder to the Assessment was properly notarized and executed within 3 months prior to the application for a contract, as shown by the copy of such consent(s) attached as Exhibit B to the Owner Contract.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Maintenance and Enforcement of Assessment. Lender agrees to provide the Financing for the Project in the total amount of $_____, according to the terms set out in the Financing Documents attached hereto as Exhibit B. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this Lender Contract, Local Government agrees to levy and continue the Assessment for the benefit of Lender until the Financing, all contractual interest, any prepayment premium, additional penalties and interest imposed by the Lender 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. Pursuant to Section 90-4-1307, MCA, installments of the Assessments due must be included in each tax bill issued under 15-16-101, MCA, and must be collected at the same time and in the same manner as taxes collected under Title 15, Chapter 16, MCA. Local Government shall have no obligation to pay the assessment and no liability to Lender should there be a default or an event of default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

Section 2. Installments. The Assessment, including the amount financed and contractual interest, is due and payable to Lender in installments as set forth in the Notice of Contractual Assessment Lien and Financing Documents. The Assessment shall include: (1) an application fee paid by Property Owner to Authorized Representative at loan closing, and (2) a recurring administration fee paid by Property Owner to the Authorized Representative. Equal semi-annual installments of the Assessment shall be collected by the Local Government at the same time and in the same manner as taxes collected under Title 15, Chapter 16, MCA. The Assessment installments will then be remitted by the Local Government to the Authorized

Representative. The amounts due to the Authorized Representative identified in Exhibit B hereto shall be retained by the Authorized Representative and the Authorized Representative shall then remit the remaining proceeds of the Assessment installments to the Lender for payment of debt service due on the loan(s) secured by the Assessment. As required by Section 90-4-1307(1)(b), MCA, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government's rights under this Lender Contract will cease and terminate upon notice from Lender to the Authorized Representative that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Lender Contract and deliver the release to the Authorized Representative. Thereafter, the Authorized Representative will record the release.

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

1. The assignment or transfer is made to a qualified lender, which may be one of the following:

    a. Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;

    b. Any insurance company authorized to conduct business in one or more states;

    c. Any registered investment company, registered business development company, or a Small Business Administration small business investment company;

    d. Any publicly traded entity; or

    e. Any private entity that: (i) Has a minimum net worth of $5 million; (ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending; (iii) Can provide independent certification as to availability of funds; and (iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.;

2. Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the payment schedule included in the Financing Documents; and

3. The assignee or transferee of the right to receive the installments executes an explicit written assumption of all of Lender's obligations under this Lender Contract.

Upon written notice to Property Owner and Authorized Representative of an assignment or transfer of the right to receive the installments that meets all these conditions, the assignor shall be released of all of the obligations of the Lender under this Lender Contract accruing after the date of the assignment and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the installments of the Assessment that does not meet all of these conditions is void.

Section 4. Assignment of Lender Contract. Lender may assign or transfer its rights or obligations under this Lender Contract, *provided, however*, that any such assignment shall be made only in accordance with applicable laws, rules, and guidelines; and *provided further, however*, that no such assignment shall be effective unless the Local Government and the Property Owner, each, have received notice from the Lender at least forty five (45) days prior to any assignment, but in no event later than sixty (60) days prior to the next Assessment payment date. The notice to the Local Government shall include the name, address, billing, and contact information of the Lender's assignee and a representation by the Lender that the Lender's assignee is an eligible lender under the Last Best PACE Program Guidelines, or other current applicable PACE Program guidelines. The notice to the Property Owner shall include the name and contact information of the Lender's assignee. The parties hereby agree that this Lender Contract shall inure to the benefit of, and shall be binding upon, the parties and their successors and permitted assigns. Any assignment of Lender Contract shall be substantially in the form attached hereto as Exhibit D.

Section 5. Financing Responsibility. Lender 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 Lender's obligations and responsibilities thereunder.

Section 6. Lien Priority and Enforcement. As provided in the Owner Contract and Section 90-4-1307, MCA: Delinquent installments of the Assessment incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty. Statutory penalties and statutory interest payable under this paragraph will be paid to the Local Government. The Assessment, together with any penalties and interest thereon, is a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the Office of the _____ County Clerk & Recorder until the Assessment and any penalties and interest are paid; and such lien has the same priority and status as other property tax and assessment liens, pursuant to Section 90-4-1307(3)(a), MCA. The lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due is not eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for any past due portion of the Assessment. *Id.*

In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse on Local Government or the Authorized Representative and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.

In the event the Property is subdivided or otherwise split the Assessment shall continue to be levied upon the new parcel on which the C-PACE Project is located. If the C-PACE Project is located on multiple parcels, the Assessment shall be allocated between each on a *pro rata* basis or as otherwise agreed to by the Property Owner and Lender, subject to approval by the Authorized Representative.

In the event of a default by Property Owner in payment of the Assessment installments called for by the Financing Documents, the Assessment lien will be enforced by Local Government in the same manner according to Title 15, Chapter 16, MCA, that a property tax lien against real property may be enforced.

In a suit to collect a delinquent installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees, penalties, and interest due, in the same manner according to Section 15-16-506, MCA, as in a suit to collect a delinquent property tax. In the event such a suit includes collection of other delinquent assessments and property taxes, Lender shall be entitled to receive its pro rata share of any settlement or judgment entered in such suit to pay delinquent installments of the Assessment.

Section 7. Final Payment. When the Assessment has been satisfied and paid in full, together with all interest and prepayment premiums, if any, provided under the Financing Documents and all costs, fees, penalties, and interest applicable under the PACE Act and payable to Lender or Local Government, Local Government's rights under the Owner Contract will cease and terminate and the Local Government will no longer report the Assessments for collection with property taxes due on the Property.

Section 8. Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Lender Contract, and no implied duties on the part of Local Government are to be read into this Lender Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender, via the Authorized Representative 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.

Section 9. Costs. No provisions of this Lender 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, other than as is contemplated for expenditure and reimbursement under Section 6 above.

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

1. Lender is a qualified lender under the PACE Program, as defined in Section 3.1 above, and is fully qualified under the PACE Program to enter into this Lender Contract and the Financing Documents;

2. Lender has access to capital sufficient to fund the principal amount of the C-PACE loan as detailed in the Financing Document in full at the date of closing;

3. Lender 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

4. Lender 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.

Section 11. Third-Party Lending Required by the PACE Act. This Lender Contract constitutes a written contract between Local Government and Lender and Lender constitutes a third-party financer as required under Section 90-4-1304(2)(b), MCA.

Section 12. Construction and Definitions. This Lender 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.

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

Section 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.

Section 15. Standing to Enforce. Lender recognizes that the Authorized Representative shall have standing to initiate legal action to enforce any of the terms and conditions of this Agreement and shall be entitled to recover its attorney fees and costs in the event it is successful

in any such action. This recognition does not in any way diminish the standing of other parties to bring legal claims on their own behalf.

Section 16. Governing Law and Venue. This Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Montana. Venue shall be exclusively with the [insert number] Judicial District Court in and for [insert County], Montana.

Section 17. Entire Agreement. This Lender 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.

Section 18. Counterparts. This Lender 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.

Section 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 Lender Contract. Property Owner has represented to Lender and Local Government that the Project is an "C-PACE project" as defined in the PACE Program and Section 90-4-1302, MCA. 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.

Section 20. Construction Terms. If this Lender Contract includes requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit C attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

EXECUTED effective as of _____, 20_____.

LENDER:

By: _____

Name:

Title:

Address:

MONTANA FACILITY FINANCE AUTHORITY AS AUTHORIZED REPRESENTATIVE FOR LOCAL GOVERNMENT:

By: _____

Name:

Title:

Address:

LOCAL GOVERNMENT – LENDER CONTRACT

EXHIBIT A

OWNER CONTRACT

LOCAL GOVERNMENT – LENDER CONTRACT

EXHIBIT B

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Schedule:

Project Completion Date:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

LOCAL GOVERNMENT – LENDER CONTRACT

EXHIBIT C

CONSTRUCTION TERMS

[if applicable]

Date	Draw down Amount	Purpose

LOCAL GOVERNMENT – LENDER CONTRACT

EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("**Assignment**"), dated __ and effective as of (the "**Effective Date**"), is made by _____ ("**Assignor**"), to _____ ("**Assignee**"). Assignor and Assignee are referred to at times, each individually as a "Party," and collectively as the "Parties."

Agreement

1. For good and valuable consideration and the payment of Ten Dollars and No Cents ($10.00), the receipt and sufficiency of which is hereby acknowledged, confessed, stipulated and agreed upon by Assignor, Assignor, intending to be legally bound, ASSIGNS, BARGAINS, GIVES, SETS OVER, CONVEYS, TRANSFERS and DELIVERS to Assignee all of Assignor's rights, title, interest, obligations, and duties under the Commercial Property Assessed Capital Enhancements ("PACE") Lender Contract (the "**Lender Contract**"), dated as of _____ entered into by Assignor and _____ (the "**Local Government"**), together with all of Assignor's rights to receive payments from _____, a _____, its successors or assigns (or its paying agent) (the "**Borrower**"), payable in accordance with the Notice of Contractual Assessment Lien Pursuant to Commercial Property Assessed Capital Enhancements Act of Montana (the "**Lien**"), dated as of _____, and recorded on _____, entered into by Borrower, and the Commercial Property Assessed Capital Enhancements ("PACE") Owner Contract (the "**Owner Contract**"), dated as of _____, entered into by Borrower and Local Government (together, the "**Transferred Interest**").

2. Assignor warrants that: (i) it is authorized to execute this document; (ii) it is conveying all legal rights and interest in the Transferred Interest; (iii) the Transferred Interest is free and clear of all liens and encumbrances, and no party has any rights in or to acquire, or hold as security, or otherwise, the Transferred Interest; (iv) it has provided the Local Government with a notice of this Assignment, a copy of which is attached hereto as **Exhibit A**; and (v) it has provided the Borrower with a notice of this Assignment, a copy of which is attached hereto as **Exhibit B**.

3. Assignor hereby agrees to make, execute and deliver to Assignee any and all further instruments of conveyance, assignment or transfer, and any and all other instruments, as may be necessary or proper to carry out the purpose and intent of this Assignment and/or to fully vest Assignee in all rights, titles, interests, obligations, and duties of Assignor in and to the Transferred Interest, which instruments shall be delivered to Assignee as soon as possible without any condition or delay on the part of Assignor.

4. Assignee hereby accepts all of Assignor's rights, title, interest, obligations, and duties under the Lien, and agrees to be bound by its terms. Assignee shall be a party to the Lender Contract and a beneficiary under the Lien and the Owner Contract, and shall have the

rights and obligations of the Assignor specified thereunder, and Assignee shall be deemed to be the "Lender" for all purposes of the Lender Contract, Owner Contract, and the Lien.

5. All notices, certificates or communications provided pursuant to the Lender Contract to Assignee shall be delivered as provided in the Lender Contract to:

Assignee: _____

With a copy to: _____

6. This Assignment shall inure to the benefit of and be binding upon the successors and assigns of Assignor and Assignee.

7. This Assignment shall be construed under and enforced in accordance with the laws of the State of Montana. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signatures provided by facsimile or other electronic transmission, including DocuSign, shall be deemed to be original signatures.

[*SIGNATURES ON FOLLOWING PAGE*]

IN WITNESS WHEREOF, Assignor and Assignee hereby agree to be bound by the terms of this Assignment, and each has executed this Assignment to be effective as of the Effective Date.

ASSIGNOR:

_____

Name:

Title:

Address:

ASSIGNEE:

_____

Name:
Title:
Address:

The undersigned hereby acknowledges notice of, and consents to, the execution and delivery of this Assignment and the consummation of the transactions contemplated hereby.

MONTANA FACILITY FINANCE AUTHORITY,
as authorized representative of Local Government:

_____

Name: Adam Gill
Title: Executive Director
Address: 1712 9th Ave, Helena, MT 59601

Exhibit A

Notice to Local Government

[Attached]

Exhibit B

Notice to Borrower

[Attached]