Contract between Local Government and Record Owner

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

RECITALS

I. The Commercial Property Assessed Capital Enhancements Act of Montana ("PACE Act"), Title 90, Chapter 4, Part 4, Montana Code Annotated (MCA), authorizes the governing body of a local government to establish a program and designate a District 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 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.

II. 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 _____ [insert county or municipality] 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.

III. Property Owner is the legal and record owner of the qualified "real property," as defined in Section 90-4-1302, MCA, within the District located at _____, _____, Montana (the "Property").

IV. Property Owner has applied to Authorized Representative to participate in the PACE Program by installing "energy conservation measures", or a "renewable energy system", or a "public safety and resiliency improvement" on existing or new buildings, 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"). Property Owner has requested that Local Government enter into this Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to 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 form of which is attached hereto as Exhibit A and the final executed version shall be incorporated herein, 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.

V. The financing of such C-PACE Project will be provided to Property Owner by _____, its representatives, successors, and assigns ("Lender"), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government to provide for repayment of the Financing secured by the Assessment under Section 90-4-1307, MCA, and as by the PACE Program (the "Lender Contract"). The financing will include only those costs and fees for which an assessment may be imposed under the PACE Act. Local Government has agreed to levy and continue the Assessment for the benefit of Lender until such financing is repaid in full and to release the Assessment lien upon notice from Lender to the Authorized Representative of such payment, and to foreclose the lien securing the Assessment for the benefit of Lender upon a default by Property Owner.

VI. 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 to the Lender Agreement 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.

VII. As required by Section 90-4-1305(3)(b)(i), MCA, the written consent of holder(s) of any mortgage liens on the Property to subordinate the mortgage lien to the Assessment lien was obtained at least three months prior to the date of Property Owner's application for this Owner Contract and is attached hereto as Exhibit B and made a part hereof.

VIII. Local Government has verified that delinquent taxes, special assessments, water or sewer charges, or delinquent assessments on the real property under a commercial property-assessed capital enhancements program are not due on the Property.

IX. As required by Section 90-4-1305(4), MCA, the Authorized Representative has obtained independent verification from the Property Owner that the Property Owner understands and accepts the terms of the Owner Contract and has made the verification available to the Local Government.

AGREEMENT

The parties agree as follows:

Section 1. Levying of Assessment. In consideration for the financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the Lender Contract, Property Owner hereby requests and agrees to the levying by Local Government of the Assessment in the amount of $_____,to be collected with taxes by equal semi-annual payments of $_____ as set forth in the Notice of Contractual Assessment Lien, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, PACE Program and the financing documents between Property Owner and Lender (the "Financing Documents") which are described or listed on Exhibit C attached hereto and made a part hereof by reference. Property Owner promises and agrees to pay such amount and interest to Local Government, in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to the Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to secure the payment of such amount, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

Section 2. Maintenance and Enforcement of Assessment. In consideration of Lender's agreement to advance financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to levy and continue the Assessment on the Property for the benefit of Lender until the Assessment, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, PACE Program and the Financing Documents are paid in full, and to release the Assessment lien upon notice to the Authorized Representative from Lender of such payment. Local Government agrees that installments of the Assessment due shall be included in each tax bill issued under Section 15-16-101, MCA, and shall be collected at the same time and in the same manner as taxes collected under Title 15, Chapter 16, MCA.

Section 3. Installments. The Assessment, including the amount financed and contractual interest accruing at a rate of __% per annum [insert reset conditions in the event of a variable rate financing], is due and payable in installments as set forth in the Notice of Contractual Assessment Lien and the 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 C 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 Owner 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 Owner Contract and deliver the release to the Authorized Representative. Thereafter, the Authorized Representative will record the release.

Section 4. Assignment of Right to Receive Installments. Lender will have the right to assign or transfer the right to receive the installments of the financing secured by the Assessment, provided all of the following conditions are met:

1. The assignment or transfer is made to a qualified lender as defined in the Lender Contract;

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 Notice of Contractual Assessment Lien and the Financing Documents; and

3. The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Lender's obligations under 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 of these conditions, the assignor shall be released of all of the obligations of the Lender under such Lender 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 the installments that does not meet all of these conditions is void.

Section 5. Assignment of Owner Contract. Property Owner may assign or transfer its rights or obligations under this Owner 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 (1) the Property Owner has received prior written consent of the Lender, which shall not be unreasonably withheld; and (2) the Local Government has received notice from the Property Owner 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. Such notice to the Local Government shall include the name and address of the Property Owner's assignee and a representation by the Property Owner that the Property Owner's assignee is an eligible "person," as defined in Section 90-4-1302, MCA, as may be amended from time to time.

The parties hereby agree that this Owner Contract shall inure to the benefit of, and shall be binding upon, the parties and their successors and permitted assigns. Any assignment of Owner Contract shall be substantially in the form attached hereto as Exhibit E.

Section 6. Lien Priority and Enforcement. Pursuant to Section 90-4-1307, MCA, delinquent installments of the Assessment will 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 retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents, may be assessed by Lender and retained by Lender.

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 Clerk and Recorder of _____ 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 the 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. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent installment of the Assessment.

Section 7. Written Contract Required by PACE Act. This Owner Contract constitutes a written contract for the Assessment between the Property Owner and Local Government as required by Section 90-4-1304, MCA. The Notice of Contractual Assessment Lien will be recorded in the Office of the Clerk and Recorder of _____ as notice of the contractual Assessment. Pursuant to Section 90-4-1305(4)(b), MCA, this Owner Contract may be canceled by the Property Owner within three (3) business days of signing the contract.

Section 8. Energy Conservation Project. Property Owner agrees that all energy conservation measures, renewable energy systems, or public safety and resiliency improvements purchased, constructed, and/or installed through financing obtained pursuant to this Owner Contract shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of a sale or assignment of the Property.

Section 9. Preference for Montana Labor. Property Owner agrees that the Project shall comply with Section 90-4-1305(5), MCA. Property Owner agrees that contractors and any subcontractors working on the Project shall use a skilled and trained workforce. Property Owner agrees that all contracts signed related to the Project shall require contractors and subcontractors to give preference to the employment of bona fide Montana residents, as defined in Section 18-2-401, MCA, in the performance of the project, if the Montana residents have substantially equal qualifications to those of nonresidents.

Section 10. Construction and Definitions. This Owner 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 PACE Program, and/or (2) the PACE Act.

Section 12. Binding Effect. This Owner Contract inures to the benefit of Local Government and is binding upon Property Owner, its heirs, successors, and assigns.

Section 12. Notices. All notices and other communications required or permitted by this Owner Contract shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at its address shown 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 13. Governing Law and Venue. This Owner 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 _____ Judicial District Court, _____ County, Montana.

Section 14. Entire Agreement. This Owner Contract constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

Section 15. 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 Owner Contract as may be reasonably necessary or required.

Section 16. Counterparts. This Owner 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 17. Costs. No provisions of this Owner 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 18. Construction Terms. If the Lender Contract includes requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D 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_____.

PROPERTY OWNER:

By: _____

Name:

Title:

Address:

MONTANA FACILITY FINANCE AUTHORITY AS AUTHORIZED REPRESENTATIVE FOR LOCAL GOVERNMENT:

By: _____

Name:

Title:

Address:

CONTRACT BETWEEN LOCAL GOVERNMENT AND RECORD OWNER

EXHIBIT A

NOTICE OF CONTRACTUAL ASSESSMENT LIEN PURSUANT
TO COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENTS ACT

CONTRACT BETWEEN LOCAL GOVERNMENT AND RECORD OWNER

EXHIBIT B

LENDER CONSENT TO PACE ASSESSMENT

CONTRACT BETWEEN LOCAL GOVERNMENT AND RECORD OWNER

EXHIBIT C

FINANCING DOCUMENTS

I. C-PACE PROGRAM DOCUMENTS

1. {Name of Local Government} Resolution of Intent to Establish a PACE Program {Insert Resolution Number}
2. {Name of Local Government} Resolution {Insert Resolution Number} Establishing a {Name of Local Government} PACE Program

II. LENDER DOCUMENTS

3. Financing Agreement between {Name of Property Owner} and {Name of Lender}
4. Other Lender documents, as applicable

III. OTHER CLOSING DOCUMENTS

5. Lender Consent to PACE Assessment (if applicable)
6. C-PACE Lender Contract between {Name of Lender} and Montana Facility Finance Authority
7. C-PACE Owner Contract between {Name of Property Owner} and Montana Facility Finance Authority
8. Borrower Acknowledgement of Risk and Certification as to Montana C-PACE Programmatic Requirements
9. Notice of Contractual Assessment Lien
10. Validity Opinion of Jackson, Murdo, & Grant, P.C.

CONTRACT BETWEEN LOCAL GOVERNMENT AND RECORD OWNER

EXHIBIT D

CONSTRUCTION TERMS

[if applicable]

Date	Draw down Amount	Purpose

CONTRACT BETWEEN LOCAL GOVERNMENT AND RECORD OWNER

EXHIBIT E

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") Owner Contract (the "**Owner Contract**"), dated as of _____, entered into by Assignor and _____ (the "**Local Government"**), together with all of Assignor's rights and obligations under 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 Assignor, and the Commercial Property Assessed Capital Enhancements ("PACE") Lender Contract (the "**Lender Contract**"), dated as of _____, entered into by _____ (the "**Lender**") 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, interest, and obligations in and under 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 received prior written consent of the Lender, 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 Owner Contract and an obligated party 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 "Property Owner" for all purposes of the Owner Contract, Lender Contract, and the Lien.

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

Consent of Lender

[Attached]