

CLARK COUNTY STAFF REPORT

DEPARTMENT: Clark County Council

DATE: October 19, 2021

REQUESTED ACTION: Council approval of an ordinance implementing a C-PACER program in Clark County.

Consent Hearing County Manager

BACKGROUND

In 2020, the state legislature passed HB 2405 authorizing Commercial Property Assessed Clean Energy and Resiliency (C-PACER) programs in the state. C-PACER programs provide a financing mechanism to encourage the installation of renewable energy systems, energy efficiency improvements, and resiliency improvements on large multi-family residential (5+ units), industrial, agricultural, and commercial properties.

Eligible improvements must reduce greenhouse gas emissions, reduce water consumption, reduce energy consumption, improve seismic resiliency, reduce stormwater or pollution, or reduce the risk of wildfire, flooding, or other natural or human-caused disaster. An engineer or other qualified professional must certify that the improvements qualify for the program; county staff will not independently make this determination.

C-PACER programs allow a property owner to finance the up-front cost of these improvements on a property and then pay the costs back over time through a property assessment. The duration of the financing agreement cannot exceed the useful life of the qualified project. Each C-PACER lien runs with the land. Collection and enforcement of the C-PACER lien and C-PACER financing installment payments, including foreclosure, is the responsibility of the capital provider.

A C-PACER lien takes precedence over all other liens or encumbrances except a lien for taxes on the property that is imposed by the state, a local government, or a junior taxing district. Before a capital provider may enter into a financing agreement to provide C-PACER financing of a qualified project, the capital provider must receive written consent from any holder of a lien, mortgage, or security interest in the real property that the property may participate in the program.

To obtain C-PACER financing, the property owner must submit an application to the county showing the proposed improvements, the certification that these improvements qualify for C-PACER financing, and other requirements. The county will then record each C-PACER lien in the real property records of the county. State law allows a county to charge an application fee to cover the costs of the application review process, and the proposed ordinance allows the County Manager to establish this fee to ensure cost recovery.

COUNCIL POLICY IMPLICATIONS

Adoption of this ordinance will create a C-PACER program in Clark County.

ADMINISTRATIVE POLICY IMPLICATIONS

The program will be administered by the Community Development Department, and will require a small amount of staff resources to manage the program.

COMMUNITY OUTREACH

This matter is being considered at a public hearing, and was discussed previously at multiple public Council Time meetings.

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

LH

Lindsey Hueer
Senior Policy Analyst

Kathleen Otto
County Manager

Primary Staff Contract Name and Extension: Lindsey Hueer, X4157

APPROVED: *Robert J. O'Brien*
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: 10-19-2021

SR# _____



APPROVED: _____
Kathleen Otto, County Manager

DATE: _____

ORDINANCE NO. 2021-10-04

AN ORDINANCE adopting Clark County Code Chapter 14.40 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program within Clark County.

WHEREAS, per RCW 36.165.005, the State Legislature granted county governments the authority to establish a commercial property assessed clean energy and resiliency (C-PACER) program that jurisdictions can voluntarily implement to ensure that free and willing owners of agricultural, commercial, and industrial properties and certain multi-family residential properties to obtain low-cost long-term financing; and

WHEREAS, state law allows this financing to be used for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resiliency measures such as seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, microgrids, and fire suppression; and

WHEREAS, the C-PACER program authorized in RCW 36.165 promotes voluntary energy efficiency, energy conservation, and resiliency. Such improvements not only save money for building owners, but also support the reduction of energy consumption, support the production of clean, renewable energy, and reduce greenhouse gas emissions; and

WHEREAS, the County Council is considering the matter at a duly-advertised public hearing and concludes that adoption will further the public health, safety and welfare; now, therefore,

BE IT ORDERED, RESOLVED AND DECREED BY THE CLARK COUNTY COUNCIL, STATE OF WASHINGTON, AS FOLLOWS:

Section 1. New. A new section is added to the Clark County Code to read:

Clark County Code 14.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program

- 14.50.010 Establishment
- 14.50.020 Definitions
- 14.50.030 Territory
- 14.50.040 Program Administration
- 14.50.050 C-PACER Financing
- 14.50.060 C-PACER Lien
- 14.50.070 Application and Review
- 14.50.080 Program Guidebook
- 14.50.090 Collection and Enforcement
- 14.50.100 Fees
- 14.50.110 Enactment
- 14.50.120 No Liability, and No Public Funds.

14.50.010 Establishment

There is hereby established within the boundaries of Clark County (the “county”) a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) program (the “Program”) in accordance with chapter 36.165 RCW (the “C-PACER Act”). The County finds that it is convenient and advantageous to establish the Program, at no net cost to the County, in order to finance Qualified Projects (as hereinafter defined), repaid by a voluntary assessment on the property benefited by such Qualified Projects, and that the Program is in the public interest, providing for the safety, health, and environmental public benefit, and provides for economic development of the community. The Program shall allow financing for the full range of Qualified Improvements on all Eligible Properties, as authorized by the C-PACER Act, and shall abide by and operate according to the C-PACER Act.

14.50.020 Definitions

The definitions in this section apply throughout Clark County Code 14.50 unless the context clearly requires otherwise:

1. “Application checklist” means the list of items in a Project Application required by the C-PACER Act, this ordinance, the Program Guidebook, and the corresponding documentation that the County accepts in order to show the requirement has been met.
2. “Assessment” means the voluntary agreement of a Property Owner to allow the County to place an annual assessment on their property to re-pay C-PACER financing.
3. “Assessment Agreement” means an agreement between the County and a Property Owner whereby the County agrees to place an assessment and C-PACER Lien on the property to secure the obligation to repay the financing.
4. “Capital Provider” means any private entity, their designee, successor, and assignees that makes or funds C-PACER Financing under this ordinance.
5. “C-PACER Financing” means an investment from a Capital Provider to a Property Owner to finance or refinance a Qualified Project as described under this Ordinance. The proposed C-PACER Financing for a Qualified Improvement may authorize the Property Owner to:
 - a. purchase directly the related equipment and materials for the installation or modification of a Qualified Improvement; and
 - b. contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a Qualified Improvement.
6. “C-PACER Lien” means the lien recorded at the County on the Eligible Property to secure the voluntary annual assessment, which remains on the property until paid in full.
7. “Eligible Property” means privately owned commercial, industrial, or agricultural real property or multifamily residential real property with five or more dwelling units. Eligible Property may be owned by any type of business, corporation, individual, or nonprofit organization permitted by state law. Eligible Property may include ground leases on Eligible Property and property financed through power purchase agreements.
8. “Financing Agreement” means the contract under which a Property Owner agrees to repay a Capital Provider for the C-PACER Financing including, but not limited to, details of any finance charges, fees, debt servicing, accrual of interest and penalties, and any terms relating to treatment of prepayment and partial payment of the C-PACER Financing.

9. "Program" means the C-PACER program established under this ordinance.
10. "Program Administrator" means the department or office designated by the County to administer the C-PACER Program.
11. "Program Guidebook" means documents that, collectively, are incorporated in Exhibit A of this ordinance.
12. "Program Application" means the application submitted to demonstrate that a proposed project qualifies for C-PACER Financing and for a C-PACER Lien.
13. "Property Owner" means an owner of a qualifying Eligible Property who desires to install Qualified Improvements and provides willing consent to the assessment against the Eligible Property.
14. "Qualified Improvement" means a permanent improvement affixed to real property and intended to: (a) decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy, including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature; (b) decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking; or (c) increase resilience, including but not limited to seismic retrofits, fire suppression, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
15. "Qualified Project" means a project approved by the Program Administrator, involving the installation or modification of a Qualified Improvement, including new construction or the adaptive reuse of Eligible Property with a Qualified Improvement. Together, Qualified Improvements, inclusive of all related and eligible costs pursuant to RCW 36.165 that are to be financed as described in a Project Application and approved by the Program Administrator, are a Qualified Project. Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed for no more than three (3) years prior to the date of Project Application.

14.50.030 Territory

The Program shall be available to all Eligible Property within the boundaries of Clark County, in accordance with Chapter 36.165 RCW. This includes both unincorporated and incorporated areas of Clark County. The Region is the incorporated and unincorporated areas of Clark County.

14.50.040 Program Administration

1. Pursuant to the C-PACER Act, the County designates the Community Development Director or their designee as the Program Administrator. The Program Administrator shall review and approve the project applications submitted in accordance with the Program Guidebook, collect any fees, execute the documents required by the Program Guidebook to enable C-PACER financing, and record the documents requested by the Property Owner and Capital Provider.
2. No services, including but not limited to energy audits, project development, or other activities associated or related to the development of a project application or installation

of Qualified Improvements shall be offered through the C-PACER Program unless priced separately and open to purchase by the Property Owner from third parties.

14.50.050 C-PACER Financing

1. C-PACER Financing, under chapter 36.165 RCW, is to be provided by Capital Providers through a Financing Agreement entered into with the owner of an Eligible Property to fund a Qualified Project.
2. The C-PACER Financing may include:
 - a. The cost of materials and labor necessary for installation or modification of a Qualified Improvement;
 - b. Permit fees;
 - c. Inspection fees;
 - d. Financing or origination fees;
 - e. Program application and administrative fees;
 - f. Project development and engineering fees;
 - g. Third-party review fees, including verification review fees;
 - h. Capitalized interest;
 - i. Interest reserves;
 - j. Escrow for prepaid property taxes and insurance; or
 - k. Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement on a specific or pro rata basis.
3. Prior to entering into a Financing Agreement, the Capital Provider must receive written consent from every holder of a lien, mortgage, or security interest in the real property that will be subject to the Assessment and C-PACER Lien agreeing that the property may participate in the program and that the C-PACER Lien will take precedence over all other liens except for a lien for taxes. Additionally, prior to entering into a Financing Agreement on an Eligible Property that is a multi-family residential property with five or more dwelling units, the Program Administrator must also receive written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements in the real property as a condition precedent to the participation in the program by the property agreeing that the property may participate in the program and that the C-PACER Lien will take precedence over all other liens except for a lien for taxes.
4. The proposed C-PACER Financing for a Qualified Project may authorize the Property Owner to:
 - a. Purchase directly the related equipment and materials for the installation or modification of a Qualified Improvement; and
 - b. Contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a Qualified Improvement.

14.50.060 C-PACER Lien

1. The C-PACER Lien amount, plus any interest, penalties, and charges accrued or accruing on the C-PACER Lien:
 - a. takes precedence over all other liens or encumbrances except a lien for taxes imposed by the state, a local government, or a junior taxing district on real property, which liens for taxes shall have priority over such C-PACER Lien, provided existing mortgage holders, if any, have provided written consent

- described in CCC 14.50.050(3); and
- b. is a first and prior lien, second only to a lien for taxes imposed by the state, a local government, or a junior taxing district against the real property on which the C-PACER Lien is imposed, from the date on which the notice of the C-PACER Lien is recorded until the C-PACER Lien, interest, penalties, and charges accrued or accruing are paid.
2. The C-PACER Lien runs with the land, and that portion of the C-PACER Lien that has not yet become due is not accelerated or eliminated by foreclosure of the C-PACER Lien or any lien for taxes imposed by the state, a local government, or junior taxing district against the real property on which the C-PACER Lien is imposed.
 3. Delinquent installments due on a C-PACER Lien incur interest and penalties as specified in the Financing Agreement.
 4. After the C-PACER Lien is recorded as provided in this Ordinance, the voluntary assessment and the C-PACER Lien may not be contested on the basis that the improvement is not a Qualified Improvement or that the project is not a Qualified Project.

14.50.070 Application and Review

1. A Property Owner and Capital Provider shall complete a Project Application and submit it to the Program Administrator for review.
2. The Project Application shall require:
 - a. An attestation by the Property Owner that the project is a “Qualified Improvement” as defined by CCC 14.50.020(14).
 - b. For an existing building seeking improvements (a) where energy or water usage improvements are proposed, a certification by a licensed professional engineer, stating that the proposed Qualified Improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, the addition of renewable sources of energy or water, or the reduction of lead in potable water; or (b) where resilience improvements are proposed, a certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience and savings in insurance, improved property values, or other benefits sufficient to leverage financing of those improvements.
 - c. For new construction, a certification by a licensed professional engineer stating that the proposed Qualified Improvements, individually, or acting as a whole, will enable the project to exceed the energy efficiency or water efficiency or renewable energy or resilience requirements of the current building code of the County.
3. The Program Administrator shall review the application according to the Application Checklist solely to determine whether it is complete, proposes a “Qualified Improvement,” contains no errors on its face, and that all information is provided in the substance and form required by the Application Checklist. If so, the Program Administrator shall sign the checklist indicating that the Project Application is deemed approved. If a Project Application is incomplete and/or does not conform to the requirements of the Application Checklist, the Program Administrator shall inform the applicant as soon as practicable that the application is denied, the reasons for the denial, and any corrections that could make the application acceptable. If feasible, the applicant shall have an opportunity to correct the application.

4. Upon approval of a Project Application, a Property Owner or Capital Provider shall provide the completed forms to the Community Development Department for execution at least five (5) days prior to close of the C-PACER transaction, along with a requested date for recordation of the Assessment Agreement, Notice of Assessment Interest and C-PACER Lien, and Assignment of Notice of Assessment and Assessment Agreement.
5. The County shall record in its real property records the Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of Notice of Assessment and Assessment Agreement, at the date requested by the Property Owner and Capital Provider or, at the request of the Property Owner and the Capital Provider, the executed documents may be delegated for recordation by the parties to the C-PACER transaction.
6. For a Property Owner and Capital Provider whose Project Application is denied by the County's Program Administrator, either party, or both, may request an adjudicative proceeding before the County's adjudicative body, consistent with the County's rules and subject to the applicable provisions of Washington's Administrative Procedures Act, RCW 34.05.

14.50.080 Program Guidebook

1. The C-PACER Program shall be administered in accordance with the requirements contained in the Program Guidebook, adopted and incorporated herein as Exhibit A.
2. The Program Guidebook and forms may be updated by the Program Administrator without approval by the Clark County Council, as long as it complies with county code and chapter 36.165 RCW.

14.50.090 Collection and Enforcement

1. Collection and enforcement of delinquent C-PACER Liens or C-PACER Financing installment payments, including foreclosure, shall remain the responsibility of the Capital Provider.
2. Pursuant to the Assessment Agreement, the C-PACER Lien shall be solely enforced by the Capital Provider at any time after one year from the date of delinquency in the same manner that the collection of delinquent real property taxes is enforced by the County, by prosecution of foreclosure proceedings under chapter 84.64 RCW et seq. This includes the provisions of RCW 84.64.040, excepting that a sworn declaration by the Capital Provider or assignee attesting to the assessment delinquency of at least one (1) year shall be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration shall have the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050.
3. Chapter 36.165 RCW provides that "collection and enforcement of delinquent C-PACER liens or C-PACER financing installment payments, including foreclosure, shall remain the responsibility of the capital provider" and that "the capital provider or their assignee shall have and possess the same powers and rights at law or in equity to enforce the C-PACER lien" in the "same manner that the collection of delinquent real property taxes is enforced by the county under chapter 84.64 RCW." As such, the County shall have no obligation to prosecute the foreclosure of a C-PACER Lien on behalf of the Capital Provider, and the Capital Provider, by accepting an assignment of a C-PACER Lien pursuant to an Assignment of Notice of Assessment and Assessment Agreement, shall assume under applicable law, the obligations, responsibilities, and duties of the County in

respect of the enforcement and foreclosure of a C-PACER Lien under chapter 84.64 RCW. Any duties by the County deemed non-delegable by the County shall be performed, on a reimbursable basis, by the County on behalf of the Capital Provider.

14.50.100 Fees

An application fee shall be paid to the County when the Project Application is submitted. The amount of the fee shall be determined by the County Manager. The County Manager shall establish a fee that makes the costs of the C-PACER program cost-neutral to the County.

14.50.110 Enactment

The provisions of this ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof. All ordinances, orders, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed upon the effectiveness of this ordinance. No provision of the Clark County Code (CCC) or violation of any provision of the CCC shall be deemed to impair the validity of this ordinance or the instruments authorized by this ordinance or to impair the security for or payment of the instruments authorized by this ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the CCC. In the event and to the extent of a conflict between this ordinance and chapter 36.165 RCW, chapter 36.165 RCW shall govern.

14.50.120 No Liability. No Public Funds.

1. This ordinance does not confer any right of action nor property interest upon any party to a C-PACER transaction against the County, and the County shall incur no liability for enacting this Program, nor shall the County, its governing body, executives, or employees be personally liable as a result of exercising any rights or responsibilities granted under this ordinance.
2. The County shall not enforce any privately financed debt under this ordinance. The County shall not use public funds to fund or repay any loan between a Capital Provider and a Property Owner. No section of this ordinance shall be interpreted to pledge, offer, or encumber the full faith and credit of the County, nor shall the County or any local government within the County pledge, offer, or encumber its full faith and credit for any lien amount through a program.

Section 2. Effective Date. This ordinance shall be effective on the 10th day following adoption.

Section 3. Instructions to Clerk. The Clerk of the Council shall:

- A. Record a copy of this Ordinance with the Clark County Auditor; and
- B. Cause notice of adoption of this Ordinance to be published forthwith, pursuant to Clark County Code 1.02.140.
- C. Provide a copy of this Ordinance to Code Publishing.

EXHIBIT A

**PROGRAM GUIDEBOOK
Commercial Property Assessed Clean Energy and Resiliency
(C-PACER) Program**

Table of Contents:

- A. Project Application and Checklist
- B. Assessment Agreement
- C. Notice of Assessment Interest and C-PACER Lien
- D. Assignment of Notice of Assessment Interest and C-PACER Lien
- E. Lien Holder Notice and Consent
- F. Certificate of Qualified Improvements
- G. Certificate of Capital Provider Qualifications
- H. Certificate of C-PACER Improvements Completion

Project Application and Checklist

PROJECT APPLICATION AND CHECKLIST

Clark County administers a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing program under Section 36.165 of the Revised Code of Washington (RCW) (the "C-PACER Act"). The C-PACER Program allows owners of eligible commercial property to obtain long-term financing from private Capital Providers for certain qualified energy efficiency and resiliency improvements. The C-PACER program agreements create a property assessment and assign collection of the assessment to the Capital Provider or lender.

The Clark County C-PACER program was established in 2021 (Ordinance No. 2021-10-04) and is administered through the Planning & Development Services Department.

The following highlights the steps of the C-PACER application process:

1. Property Owner develops an energy generation, energy efficiency, water conservation, or resiliency project idea.
2. Property Owner identifies a registered C-PACER Capital Provider for their project.
3. Property Owner and Capital Provider coordinate to complete application materials and submit to the Community Development Department (Program Administrator) with application fee.
4. Community Development Department reviews the application for completion.
5. Community Development Department issues a letter of approval, conditional approval, denial or request for additional information to the applicant (within 15 business days of receiving an application).
6. Capital Provider drafts agreements and submits to the Planning & Development Services Department for review and signature of approval by County Manager.
7. Community Development Department issues a letter confirming agreements are ready for recordation and will be released upon payment of C-PACER program fees.
8. Applicant or Capital Provider submits payment for the C-PACER program fees to the Community Development Department.
9. Community Development Department releases the agreements to the applicant or Capital Provider for recordation with the County Auditor (standard recordation fees apply)
10. Applicant or lender provides recordation number to Community Development Department.
11. Capital Provider funds the project.
12. After project completion, applicant provides a signed certification of completion form to the Capital Provider and the Community Development Department.
13. Loan payments are made by the Property Owner to the Capital Provider over the loan term.

C-PACER Project Application

Applicant/Agent:

Name: _____
Mailing address: _____
City: _____ State: _____ Zip Code: _____
Email: _____
Phone: _____

Property Owner(s) Information (if different from above):

Name(s): _____
Mailing address: _____
City: _____ State: _____ Zip Code: _____
Email: _____
Phone: _____

Property Information:

Address: _____
City: _____ State: _____ Zip Code: _____
Tax Parcel Number(s): _____
Property Description: _____

Property Type: Commercial Agricultural Industrial
 Multi-family with 5+ units
Building use: _____

Qualifying Owner:

Limited Liability Company General or limited partnership
 Corporation Individual/sole proprietorship
 Nonprofit organization Trust

Proposed Qualifying Improvements

Check all that apply:

Energy efficiency Renewable energy Water efficiency
 Building resiliency Other

Capital Provider Information

Name: _____
Contact Person: _____
Mailing address: _____
City: _____ State: _____ Zip Code: _____
Email: _____
Phone: _____

Must answer "yes" to at least one of the following, and provide required documentation as per the Checklist:

- a) Federal or state-chartered bank or credit union Yes No
- b) Registered Capital Provider in 2+ states Yes No
- c) Qualified to do business in WA State Yes No

Lienholder Consent Form

Signed and notarized? Yes No (if no, application is incomplete)

Signature on Application

By signature below, the applicants (Property Owner and Capital Provider) affirm that the information and documentation are true and correct to the best of their ability and that the applicants understand the risks of participating in the C-PACER program. Further, the applicants affirm that neither the County, its governing body, executives, nor employees are personally liable as a result of exercising any rights or responsibilities granted under this program.

Application form signed and dated on: _____

Property Owner: _____

Name and Title: _____

Capital Provider: _____

Name and Title: _____

Application Checklist

- _____ C-PACER Application Form
- _____ Documentation of Property Address (deed, title report, assessor/treasurer record)
- _____ Address is located within Clark County
- _____ Documentation of Property Ownership (deed, title report)
- _____ Confirmation Property Ownership matches title report documentation
- _____ Qualifying property documentation (appraisal, zoning report, ground lease, assessor/treasurer record)
- _____ Qualifying owner documentation (LLC/LP formation, trust agreement, valid driver's license, power of attorney, corporate resolution authorizing representation)
- _____ Capital Provider documentation
 - _____ If a federal or state-chartered bank or credit union, the certificate of organization or similar document;
 - _____ If not a federal or state-chartered bank or credit union, evidence of registration as a C-PACE Capital Provider in 2 or more states;
 - _____ If not a federal or state-chartered bank or credit union, evidence of financing for at least one previous C-PACE transaction in another jurisdiction.
- _____ Certificate of Capital Provider Qualifications
- _____ Qualifying Improvement Certification
- _____ Lienholder Consent(s)
- _____ C-PACER Application Fee
- _____ Assessment Agreement
- _____ Approval by County, including signature of County Manager
- _____ Record documents, and provide confirmation of recording to the Community Development Department
- _____ Project Completion Certificate

Assessment Agreement for C-PACER Financing

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Assessment Agreement for C-PACER Financing

Clark County, Washington

This ASSESSMENT AGREEMENT for C-PACER FINANCING (this "**Agreement**") is made and entered into as of this [] day of [], 20xx , (the "**Effective Date**") by and between the County of Clark, Washington (the "**County**"), and [], the record owner(s) (the "**Property Owner**") of the fee title to the real property identified on Exhibit 1 (the "**Property**").

RECITALS

WHEREAS, the County has established the Commercial Property Assessed Clean Energy and Resiliency Program (the "**Program**") through the adoption of Ordinance No. [] ("**County Ordinance**") to allow the financing of certain renewable energy, energy and water efficiency, and resiliency improvements ("**Qualified Improvements**"), through the levy of contractual assessments pursuant to RCW 36.165 (as may be amended from time to time, the "**C-PACER Act**"); and

WHEREAS, the purpose and method of approval of C-PACER financing under the Program are described in the Program Guidebook attached to the County Ordinance, as the same may have been amended from time to time prior to the Effective Date of this Agreement (the "**Program Guidebook**"); and

WHEREAS, the Property is located in the boundaries of the County and the County has consented to owners of eligible properties within its jurisdiction participating in the Program; and

WHEREAS, the Property Owner has submitted application materials including a description of the Qualified Improvements that will be acquired, constructed on and/or installed on the Property; and

WHEREAS, the County has reviewed such application materials to assess compliance with the C-PACER Act, the County Ordinance, and Program Guidebook, and the County has determined that the project proposed by the Property Owner complies with such criteria and is approved for participation in the Program (the "**Approved Project**"); and

WHEREAS, the Approved Project is to be financed pursuant to a Financing Agreement between the Property Owner (the "**Financing Agreement**") and a Capital Provider (together with its designee or assigns, the "**Capital Provider**") and under which the Property Owner agrees to repay such Capital Provider; and

WHEREAS, pursuant to RCW 36.165, the County and the Property Owner must enter into an agreement whereby the Property Owner voluntarily consents to have an assessment levied and a lien placed on the qualifying property in exchange for receiving and repaying C-PACER financing; and

WHEREAS, it is a condition to closing of the Financing Agreement that the Property Owner and the County enter into this Agreement and that this Agreement be assigned to the Capital Provider; and

WHEREAS, the Property Owner voluntarily and willingly agrees to have an assessment levied on the Property and to enter into this Agreement in order to finance the installation on the Property of the Qualified Improvements contemplated as part of the Approved Project, all on the terms set forth in the Financing Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Property Owner and the County formally covenant and agree as follows, with the intent to bind themselves and their respective successors and assigns:

AGREEMENT

Section 1. Purpose. The Property Owner and the County are entering into this Agreement for the purpose of subjecting the Property to a C-PACER assessment to finance or refinance the purchase, installation, or construction of the Qualified Improvements identified on Exhibit B on the Property.

Section 2. The Property. This Agreement relates to the real property identified in Exhibit 1. The Property Owner has supplied to the County current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute and deliver this Agreement.

Section 3. Assessment and Lien; Assignment.

(a) The Property Owner agrees that upon the execution and delivery of this Agreement by the parties, the Property Owner voluntarily and willingly consents to the placement of an assessment levied against the Property by the County pursuant to this Agreement and applicable law in the principal amount of \$[_____], together with all interest, penalties, and fees as described in the Financing Agreement (the “**Assessment**”). Upon execution and delivery of this Agreement, the County will execute and cause to be recorded in the office of the County Auditor for the County, together with a copy of this Agreement, pursuant to RCW 36.165, the Notice of Assessment Interest and C-PACER Lien (“**Notice of Assessment**”), substantially in the form of Exhibit C. The recording of the Notice of Assessment will cause the Assessment to attach as a lien upon the Property for the benefit of the County (the “**C-PACER Lien**”) and provide record notice to third parties of the existence of the C-PACER Lien.

(b) The execution and delivery of this Agreement by the parties authorizes and effectuates the levy of the Assessment by the County against the Property without any further action required by the parties.

(c) The Property Owner hereby promises to pay the Assessment for a period of [_____] years on the due dates set forth in Exhibit D hereto (the “**Assessment Schedule**”). The Property Owner agrees, as provided in the Financing Agreement, to pay the amount due in installments according to the Assessment Schedule (each, an “**Assessment Installment**”), each such Assessment Installment to be paid by the Property Owner by its due date in order to avoid delinquencies and the accrual of interest and related penalties.

(d) The Assessment shall be secured by the C-PACER Lien until paid in full. Failure to pay any Assessment Installment, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due on the terms and provisions of the Financing Agreement. In addition, under those circumstances, the C-PACER Lien may be foreclosed in the manner specified in Section 4, below.

(e) The Assessment and the C-PACER Lien shall be assigned, pursuant to the Assignment of Assessment Agreement (the “**Assignment**”), to the Capital Provider, its designee or assigns as set forth in the Financing Agreement. The Assignment shall be executed and delivered contemporaneously with this Agreement and recorded immediately following the Notice of Assessment.

Section 4. Collection of Assessment: Foreclosure.

(a) The Assessment Installments shall be collected in the manner specified in the Financing Agreement.

(b) The Property Owner acknowledges that if any Assessment Installment is not paid when due, the C-PACER lien may be enforced by the Capital Provider at any time after one year from the date of delinquency in the same manner that the collection of delinquent real property taxes is enforced by the County. This enforcement may include prosecution of foreclosure proceedings under chapter 84.64 RCW et seq., including the provisions of RCW 84.64.040, excepting that a sworn declaration by the Capital Provider attesting to the assessment delinquency of at least one year shall be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration shall have the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050.

(c) As permitted by RCW 84.64.040, Property Owner expressly consents to prosecution of said action of foreclosure by Capital Provider in accordance with the terms of the Financing Agreement. The County shall have no obligation to prosecute such foreclosure on behalf of the Capital Provider, or to otherwise participate in such foreclosure except to the extent that any action on the part of the County or any County official is required in order to allow the Capital Provider to prosecute or effectuate the foreclosure under RCW 84.64, or to ratify or confirm any action of the Capital Provider taken in furtherance of the foregoing, as contemplated in the County Ordinance.

(d) [Because the Agreement covers multiple parcels, an action of foreclosure on a parcel or parcels pursuant to this section shall be brought in accordance with the terms specified in the Financing Agreement, to the extent consistent with the requirements of RCW 84.64.040.]

Section 5. Term; Agreement Runs with the Land.

(a) Except as otherwise set forth in this Agreement, this Agreement shall terminate upon the final payment or prepayment of the Assessment. Following such termination, the County shall cause to be executed, delivered, and/or recorded such instruments as are necessary in order to release the C-PACER Lien. The C-PACER Lien placed pursuant to this Agreement

establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land.

(b) The balance of the C-PACER Lien that has not yet become due is not accelerated or eliminated by foreclosure of the C-PACER Lien or any lien for taxes imposed by the state, a local government, or junior taxing district against the Property.

(c) In the event the Property is subdivided while any portion of the Assessment remains unpaid, the Assessment will be assigned to each of the newly created parcels on the basis of [relative valuation], unless the Financing Agreement provides that the Assessment should be allocated in an alternate manner.

Section 6. Recordation of Documents. The County shall cause to be recorded in the office of the County Auditor the Notice of Assessment, which includes this Agreement as an attachment, and such other documents that are attached as Exhibits to this Agreement.

Section 7. Amendment. (a) This Agreement may be modified only by the written agreement of the Capital Provider and the Property Owner.

(b) The Property Owner agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Agreement.

Section 8. Binding Effect; Assignment. This Agreement inures to the benefit of and is binding upon the County, the Property Owner and their respective successors and assigns. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner (other than repayment of the Assessment in full in accordance with the terms of the Financing Agreement) will impair in any way the right to pursue foreclosure of the C-PACER Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. With exception of Section 9, any assignee shall be a party to this Agreement and shall have all of the rights and obligations of the County hereunder to the extent that such rights and obligations have been assigned by the County pursuant to the assignment documentation between the County and the assignee. The County may furnish any information concerning the Property Owner in its possession from time to time to prospective assignees.

Section 9. No Liability of the County. Pursuant to RCW 36.165, the County shall incur no liability as a result of any provision of this Agreement, nor shall any members of the governing body, employees, board members and executives of the County be personally liable for exercising any rights or responsibilities pursuant to or in furtherance of this Agreement. This provision shall inure only to the County, its governing body, employees, board members, and executives, and not to the benefit of the County's successors or assigns of this Agreement.

Section 10. Indemnification. Property Owner agrees to defend, indemnify and hold the County, its commissioners, employees, agents and contractors harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with this Agreement, the Approved

Project, the Assessment and the C-PACER Lien. Property Owner's duty to indemnify the County shall not apply to liability for damages to the extent caused by or resulting from the sole or contributory negligence or willful misconduct of the County, its commissioners, employees, agents or contractors.

Section 11. **Governing Law; Venue.** This Agreement is governed by and construed in accordance with the laws of the State of Washington. Any legal action brought under this Agreement must be instituted in a superior court of the County.

Section 12. **Severability.** Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 13. **Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Signatures Appear on Following Page

IN WITNESS WHEREOF, the County and the Property Owner have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

COUNTY:

County of Clark, State of Washington

By: _____
Its: _____

PROPERTY OWNER:

By: _____
Its: _____

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____, 20__
by _____ [,
the _____,
of _____]

WITNESS my hand and official seal.

Signature : _____ (seal)

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____,

by _____,

the _____, of _____ County,
Washington.

WITNESS my hand and official seal.

Signature : _____ (seal)

EXHIBIT 1

PROPERTY LEGAL DESCRIPTION

[To be inserted]

EXHIBIT 2

QUALIFIED IMPROVEMENTS

[To be inserted]

EXHIBIT 3

FORM OF NOTICE OF ASSESSMENT

[To be inserted]

EXHIBIT 4

ASSESSMENT SCHEDULE

Period	Bill date	Delinquent After Date	Payment	Interest	Principal	Principal Remaining	Annual Collection Costs**	Total Payment Due
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								

Error! Unknown document property name.

Notice of Assessment Interest and C-PACER Lien

RETURN NAME and ADDRESS

Please Type or Print Neatly and Clearly All Information

Document Title(s) NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN

Reference Number(s) of Related Documents

Grantor(s) [PROPERTY OWNER]

Grantee(s) CLARK COUNTY

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

Assessor's Tax Parcel ID Number _____

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

Signature of Requesting Party

Error! Unknown document property name.

Instrument Prepared By
And Recording Requested by:

Space Above for Recorder's Use

NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN

Washington RCW 36.165

Filed in XXXX County

(GRANTEE) XXXX COUNTY

(GRANTOR) [PROPERTY OWNER]

Notice is hereby given that the person named below is placing a C-PACER Lien pursuant to chapter 36.165 RCW. In support of this lien the following information is submitted:

1. THE ASSESSMENT LIEN GRANTEE	XXXX COUNTY
2. DATE ON WHICH THE ASSESSMENT AGREEMENT WAS SIGNED GRANTING THE RIGHT TO PLACE AN ASSESSMENT AND C-PACER LIEN ON THE PROPERTY	[INSERT]
3. THE PROPERTY OWNER GRANTING THE PLACEMENT OF THE ASSESSMENT AND C-PACER LIEN	[INSERT]
4. THE PROPERTY AGAINST WHICH THE ASSESSMENT AND C-PACER LIEN IS PLACED IS LOCATED AT THE FOLLOWING MUNICIPAL ADDRESS:	[INSERT]
5. LEGAL DESCRIPTION OF THE PROPERTY IS AS FOLLOWS	SEE EXHIBIT 1 TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
6. ASSESSOR'S PARCEL NUMBER OF THE PROPERTY	[INSERT]

Error! Unknown document property name.

7. PRINCIPAL AMOUNT OF ASSESSMENT SECURED BY C-PACER LIEN	[INSERT]
8. TERMS AND LENGTH OF ASSESSMENT SECURED BY C-PACER LIEN	SEE EXHIBIT _ TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
9. COPY OF ASSESSMENT AGREEMENT (ATTACHED)	[INSERT]

IN WITNESS WHEREOF, Grantee and Grantor have caused this Notice of Assessment Interest and C-PACER Lien to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

GRANTEE:

County of Clark, State of Washington

By: _____
Its: _____

GRANTOR:

[PROPERTY OWNER]

By: _____
Its: _____

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____, 20__, by

{the _____,

of _____} [Only if authorized party who is not the Property
Owner]

WITNESS my hand and official seal.

Signature : _____ (seal)

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____, by
_____, of _____ County, Washington. the

WITNESS my hand and official seal.

Signature : _____ (seal)

Lien Holder Notice and Consent

**Notice of Proposed C-PACER Assessment and
Request for Consent of Lien or Other Obligation Holder to C-PACER Assessment and C-
PACER Lien**

Notice Date:

Lien or Other Obligation Holder:

Street:

City/State/Zip Code:

ATTN:

Property/Loan Information:

Address: [_____] (the “Property”)

Loan Number:

Why has the Financial Institution received this notice?

The Property Owner listed below owns the subject Property. Your Financial Institution holds a lien, mortgage or security interest or other secured encumbrance on the Property.

[Property Owner] (the “Property Owner”) wishes to install energy efficiency, water conservation, renewable energy, and/or resiliency improvements to the property using Commercial Property Assessed Clean Energy and Resiliency (C-PACER) financing, known as the “C-PACER” program. The Property Owner requests your consent for the property to participate in the program.

Background on C-PACER in Washington

Washington statute (RCW 36.165) (the “C-PACER Act”) authorizes Washington counties to establish a C-PACER program in their communities. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Act.

C-PACER financing helps stimulate local economies by allowing owners of agricultural, commercial, and industrial and multi-family properties with 5 or more dwelling units to obtain low-cost, long-term financing for energy efficiency, renewable energy, and water conservation and resiliency projects. Clark County, where the subject property is located, has established a C-PACER program within its jurisdiction for qualifying Property Owners.

Through the C-PACER program, the financing for qualifying projects is provided by a private Capital Provider, and the principal amount is recorded by Clark County as a voluntary assessment and lien (“the C-PACER lien”) on the Property. The annual assessment payments relating to that lien is repaid to, and collected by, the private Capital Provider, which Capital Provider has the responsibility of administering the Property Owner’s C-PACER obligation. Assessments have long been used to pay for improvements to real property that meet a public policy objective, such as sidewalks, parks, lighting districts, and water and sewer projects. Like other assessments, the

C-PACER obligations remain with a property upon its sale, until the financing is fully repaid, at which point the C-PACER lien and assessment are retired.

Under RCW 36.165, once consent from pre-existing lien holders and, if applicable, the holders of certain other obligations, on a property is given, an assessment can be imposed and a C-PACER lien can be filed. Once filed, that lien, like other government-imposed liens, moves into a superior position above other obligations, except for property taxes and other qualifying government obligations.

To qualify for C-PACER financing, the proposed project must meet the following basic criteria:

- The property is located in Clark County, Washington, a county that has passed a resolution authorizing a C-PACER program;
- The property is an agricultural, commercial, or industrial property, or multi-family property of 5 or more dwelling units;
- The proposed measures reduce energy consumption, reduce water consumption, increase the production of on-site renewable energy, reduce lead in potable water, and/or increase the resiliency of the property, as defined in the C-PACER Act;
- The proposed measures are permanently affixed to the property; and
- The Property Owner receives consent of the current mortgage/lien holder(s).

Why should your Financial Institution consent to the C-PACER Assessment and C-PACER Lien?

1. Property improvements financed through the C-PACER program have public benefits. To qualify for C-PACER, a project must install improvements that either conserve energy or water resources; reduce greenhouse gas emissions; reduce lead levels in potable water; or improve safety and public health through certain resiliency enhancements (e.g., seismic stability). Under the C-PACER program eligibility requirements, a proposed project must include verification by a qualified and licensed professional certifying that the improvements will provide these public benefits. Qualifying improvements typically enhance property value and improve its collateral value for the mortgage or other obligatory interests that your Financial Institution holds in the Property.
2. C-PACER payments do not accelerate. In the event a mortgage holder or lien holder forecloses on the property for any reason, only the C-PACER payments currently due and in arrears would be payable, which is likely a relatively small proportion of the total amount financed. *In the case of a default, the entire outstanding principal, interest and penalties of your Financial Institution's loan may be accelerated and come due; however, for the C-PACER financing, only the past due amounts may be collected in a default.* The remaining C-PACER financing balance runs with the land and regular installment payments would be paid by the new Property Owner.
3. Improvements financed through C-PACER often reduce a property's operating costs and/or the potential for catastrophic damage, and they often improve health and comfort of occupants, all of which make a property more attractive to tenants and future owners.

4. Property improvements financed through the C-PACER program align with public Climate Action Plans and, potentially, with your institution's sustainability plans and commitments, and to shareholder interests.

What should your Financial Institution know?

Property Owner has indicated its intention to apply for C-PACER financing for improvements outlined in on the Property. The C-PACER financing will be levied on the Property pursuant to an Assessment Agreement between the Property Owner and the County, and the amount of the C-PACER financing will be determined by a Financing Agreement between the Property Owner and the private Capital Provider. The C-PACER financing terms will consist of:

Total cost of improvements:	
Total C-PACER financing requested (+/- 5%):	
Annual interest rate not to exceed:	
Term of repayment:	
Total estimated annual C-PACER Payments:	
# Payments per year:	

As required by the C-PACER Act, Property Owner is sending this Request for Consent of Lien or Other Obligation Holder to the creation of a C-PACER Assessment and Lien to:

- i. provide notice of Property Owner's proposed participation of the Property in the program;
- ii. request confirmation from your Financial Institution (a current mortgage/lien or other obligation holder) that the levy of the C-PACER payments will not trigger a default nor the exercise of any remedies under your current lien or other encumbrance relating to the Property;
- iii. provide notice that, due to the requirements under the County's Assessment Agreement with the Property Owner, the C-PACER private Capital Provider financing payments will be collected in installments that are subject to the same remedies and lien priorities as real property taxes; and
- iv. declare the Property Owner's agreement to uphold and pay on a timely basis both the existing obligations to your Financial Institution which are secured by the Property and the proposed C-PACER installments.

Execution and Return of Consent. The Property Owner would appreciate your executing the attached Consent Form for the Clark County C-PACER program and returning it to the undersigned at your earliest convenience.

Sincerely,

BY: (signature): _____

PROPERTY OWNER NAME: [_____]

MAILING ADDRESS (if different than Property address): []

Assignment of Notice of Assessment Interest and C-PACER Lien and Assessment Agreement

[see following page]

Please Type or Print Neatly and Clearly All Information

Document Title(s) ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN AND ASSESSMENT AGREEMENT

Reference Number(s) of Related Documents

Grantor(s)/Assignor [CLARK COUNTY]

Grantee(s)/Assignee [CAPITAL PROVIDER OR DESIGNEE]

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

Assessor's Tax Parcel ID Number:

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

Signature of Requesting Party

WHEN RECORDED, RETURN TO:

**ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN
AND ASSIGNMENT OF ASSESSMENT AGREEMENT**

This ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN AND ASSIGNMENT OF ASSESSMENT AGREEMENT (this "Assignment") is dated as of [MONTH] __, 20__ by Clark County, Washington ("Assignor"), to [CAPITAL PROVIDER] ("Assignee").

For value received, Assignor hereby grants, assigns and transfers to Assignee, without recourse or warranty of any kind, express or implied, all of Assignor's rights in, title to, and interest under, that certain Notice of Assessment Interest and C-PACER Lien, dated as of [_____] , 20__ , by [_____] ("Property Owner") and Assignor, recorded on [_____] , 20__ as Instrument No. _____ in the office of the records of Clark County, State of Washington (the "Notice of Assessment Interest") and the Assessment Agreement dated as of [_____] , 20__ , between Property Owner and Assignor and attached to such Notice of Assessment Interest, together with the obligations secured by the C-PACER Lien and all other instruments, documents and certificates executed in connection therewith. Assignee hereby accepts all of Assignor's rights in, title to, and interest under the Assessment Agreement and the Notice of Assessment Interest, together with the obligations secured by the C-PACER Lien and all other instruments, documents and certificates executed in connection therewith.

Pursuant to RCW 36.165.060, by accepting this Assignment, Assignee agrees for the benefit of Assignor that Assignee shall be solely responsible for enforcing the obligation of Property Owner to pay the Assessment described in the Assessment Agreement, including pursuing a foreclosure of the C-PACER Lien in accordance with Chapter 84.64 RCW. Assignor shall have no obligation to prosecute such foreclosure on behalf of Assignee, or to otherwise participate in such foreclosure, except to the extent that any action on the part of Assignor or any official of Assignor is required in order to allow Assignee to prosecute or effectuate the foreclosure under RCW 84.64, or to ratify or confirm any action of Assignee taken in furtherance of the foregoing, as contemplated in the County Ordinance (as defined in the Notice of Assessment Interest).

Signatures appear on following page

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

“ASSIGNOR”

CLARK COUNTY, WASHINGTON

By: _____

Name: _____

Title: _____

STATE OF WASHINGTON)

: ss.

CLARK COUNTY)

This record was acknowledged before me on _____, by
_____, the
_____, of _____ County,
Washington.

WITNESS my hand and official seal.

Signature: _____ (seal)

“ASSIGNEE”

[CAPITAL PROVIDER OR DESIGNEE]

By: _____

Name: _____

Title: _____

STATE OF _____)

: ss.

COUNTY OF _____)

On [MONTH] _____, 20____ personally appeared before me, _____, who duly acknowledged to me that he/she executed the foregoing instrument on behalf of [CAPITAL PROVIDER OR DESIGNEE] in his/her capacity as _____ of [CAPITAL PROVIDER OR DESIGNEE]

NOTARY PUBLIC

Lien or Other Obligation Holder Consent to C-PACER Assessment and Lien

Date:

Property/Loan Information

Building Address:

Tax key/Parcel:

Lien or Other Obligation Holder:

Loan Number:

This Lien or Other Obligation Holder Consent Acknowledgement to C-PACER Assessment and Lien (this "Consent") is given by the undersigned entity (the "Holder") with respect to the above-referenced C-PACER Assessment and Lien and property ("Property") in relation to the Clark County C-PACER program (the "Program").

RECITALS

- A.** The Holder is in receipt of written notice ("Notice") from the owner of the Property ("Property Owner") that it intends to finance the installation on the Property of certain Qualified Improvements according to RCW 36.165 that will be permanently fixed to the Property and that will be financed by participating in the Program.
- B.** The Holder understands that, as a result of an Assessment Agreement between Clark County and the Property Owner, and a Financing Agreement between the Property Owner and _____ (the "C-PACER Capital Provider"), that the C-PACER Assessment and Lien against the Property, as described in the C-PACER Assessment Agreement between the County and Property Owner and in the C-PACER Financing Agreement between the private Capital Provider and the Property Owner (the "C-PACER Assessment"), will be levied on the Property, and that the C-PACER lien against the Property is a first and prior lien, second only to a lien for taxes imposed by the state, a local government, or a junior taxing district against the real property on which the C-PACER lien is imposed, from the date on which the notice of the C-PACER lien is recorded until the C-PACER Assessment, including any interest, penalties, and charges accrued or accruing under the terms of the Financing Agreement are paid in full.
- C.** The Property Owner has agreed in a manner acceptable to the Holder to uphold and pay on a timely basis both the existing obligations to the Holder which are secured by the Property and the proposed C-PACER Assessment payments.
- D.** The Holder consents to the Property's participation in the C-PACER program and that the C-PACER lien will take precedence over all other liens except for a lien for taxes as described in paragraph B.

[Continued on next page]

ACKNOWLEDGEMENT

The undersigned hereby represents that it is authorized to execute this Acknowledgement on behalf of the Holder. The Holder hereby:

- (i) confirms that it has received the Notice;
- (ii) acknowledges the levy by Clark County of the C-PACER Assessment pursuant to the terms of the Assessment Agreement and C-PACER Financing Agreement; and
- (iii) agrees that the levy and payment of the C-PACER Assessment will not constitute a default nor trigger the exercise of any remedies under the Holder's Loan or other obligation documents.

The Holder hereby acknowledges that the Property Owner, the County, the C-PACER Capital Provider and the County's designated C-PACER Program Administrator, will rely on the representation and acknowledgement of the Holder set forth in this Acknowledgement. The Recitals are integrated into and made a part of this Acknowledgment.

Holder:

By:

Signature:

Title:

Date:

In witness whereof, _____ has caused its name to be signed this ____ day of

_____, _____.

By: _____,

Certificate of Qualified Improvements

CLARK COUNTY C-PACER PROGRAM
CERTIFICATE OF COMPLIANCE
Energy, Water, Renewable Energy, Resilience

I, the undersigned, hereby certify the following facts and make the following certifications with respect to the project described in the attached Project Application (the "Project") under the _____ County Commercial C-PACER Program:

1. I am a licensed Professional Engineer in the State of Washington, whose registration number and stamp are shown below, OR

2. I am accredited by or belong to a firm with an accreditation from:
 - American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
 - Building Energy Assessment Professional (BEAP)
 - Building Energy Modeling Professional (BEMP)
 - Operations & Performance Management Professional Certification (OPMP)
 - High-Performance Building Design Professional Certification (HBDP)
 - Association of Energy Engineers (AEE)
 - Certified Energy Manager (CEM)
 - Certified Measurement and Verification Professional (CMVP)
 - Certified Energy Auditor (CEA)
 - Building Performance Institute
 - Energy Auditor
 - Investor Confidence Project
 - ICP Quality Assurance Assessor
 - Other. _____

Please provide verification of professional accreditation and recognition

3. The application is for:
 - ___ an existing building
 - ___ new construction

4. Please describe your relationship to the project:
 - ___ I am employed by the project applicant in my professional capacity
 - ___ I am a contracted independent third-party reviewer

5. I reviewed the following information regarding the project (e.g., equipment specifications OR design drawings/modeling OR permit applications OR an ASHRAE Level 1 assessment/energy assessment): Please Describe:

6. The project proposal includes the “Qualified Improvements”, as defined in RCW 36.165 and the Program Guidebook, and the estimated useful life of each Qualified Improvement, which are listed in an attachment to this certification. (Please attach)
7. The Qualified Improvements will be permanently affixed to the property.

IF FOR AN EXISTING BUILDING (check those that apply):

I CERTIFY:

_____ The proposed Qualified Improvements will result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.

_____ The Qualified Improvements will result in improved resilience, which may include, without limitation, seismic resilience, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids. If other, specify: _____

_____ Prior to the installation of the Qualified Improvements, the pre-existing product, device, or interacting group or products or devices did not conform to applicable code requirements, or the subject property as a whole did not conform to the currently applicable building energy or water code for the County. After the Qualified Improvements are installed, the subject property will meet the applicable code or codes.

----- (If using CPACER for refinancing) Prior to the installation of the Qualified Improvements, the pre-existing product, device, or interacting group or products or devices did not conform to applicable code requirements, or the subject property as a whole did not conform to the currently applicable building energy or water code for the County. After the Qualified Improvements were installed, the subject property met the applicable code or codes.

IF FOR NEW CONSTRUCTION (check those that apply):

I CERTIFY:

_____ Each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency or water efficiency or renewable energy code requirements

_____ The building as a whole, as a result of the Qualified Improvements, performs above or exceeds applicable building energy and/or water codes

_____ The proposed resiliency Qualified Improvements will enable the subject property to exceed the resiliency code requirements.

Signature: _____

NAME:

Business name:

Business address:

Business contact email:
Business contact phone:

IF APPLICABLE

License No. _____

Stamp: _____

ATTACHMENTS (Please attach to Certification)

Certificate of Capital Provider Qualifications

CERTIFICATE OF CAPITAL PROVIDER QUALIFICATION

Please check all of the following that apply to the qualifications of [] (“Capital Provider”), the Capital Provider that will supply the C-PACER financing for the project located at []:

_____ Capital Provider is registered to provide C-PACE financing in at least two other states.

State: _____

Program Name: _____

State: _____

Program Name: _____

Please provide documentation. Appropriate documentation includes a certification or verified copy of registration as a C-PACE provider by a C-PACE program.

_____ Capital Provider has financed at least one previous C-PACE transaction in another jurisdiction.

State: _____

Program Name: _____

Transaction: _____

Please provide documentation. Appropriate documentation includes a copy of a recorded transaction document (such as Notice of Assessment or Lien) specifying that is part of a C-PACE transaction.

_____ Capital Provider is a federally chartered bank, thrift institution, or credit union.

Please provide documentation. Appropriate documentation includes a copy of the latest public filing, license, or registration with the applicable federal regulatory body.

_____ Capital Provider is a state-chartered bank, thrift institution or credit union.

Please provide documentation. Appropriate documentation includes a copy of the latest public filing, license, or registration with the applicable state regulatory body.

_____ Capital Provider is a private entity whose principal place of business is located in Washington state, does not meet the above qualifications, but provides the following information for review and approval. Submission does not guarantee approval.

Name

Address

Contact name:

Email:

Phone Number:

Business License No:

Attach the most current audited financial statements (to demonstrate solvency) or the most current regulatory or business filing required by the state (to demonstrate good standing).

[Remainder of Page Intentionally Left Blank]

The undersigned certifies that the above is true and accurate as of the current date:

[Capital Provider]

By: _____

Name and Date:

Title:

Certificate of C-PACER Improvements Completion

CERTIFICATE OF C-PACER IMPROVEMENTS COMPLETION

Property Owner: _____

Property Address: _____

C-PACER application approval date: _____

C-PACER financing closing date: _____

The undersigned certifies that the work under the above approved C-PACER Application, attached as **Exhibit 1** hereto, has been satisfactorily and properly completed and all improvements are operating as intended.

PROPERTY OWNER:

[INSERT ENTITY NAME, IF APPLICABLE]

BY: _____

Signature

Printed Name

Title

1
2
3
4
5
6

Exhibit 1

C-PACER Application

[See Attached]