

Jefferson County C-PACER Program

Attachment 6: Assessment Agreement for C-PACER Financing

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Assessment Agreement for C-PACER Financing

Jefferson 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 Jefferson, Washington (the "**County**"), and [], the record owner(s) (the "**Property Owner**") of the fee title to the real property identified on Exhibit A (the "**Property**").

RECITALS

WHEREAS, the County has, on [] 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 A. 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 \$[REDACTED], 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 [REDACTED] 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. Assignment, Billing, and Collection of Assessment; Foreclosure.

(a) The Assessment and C-PACER Lien shall be assigned by the county to the Capital Provider as provided in RCW 36.165.050(3).

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

(c) 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 as a mortgage lien under chapter 61.12 RCW, except that no sale of the property shall discharge or in any manner affect the priority of the C-PACER Lien with respect to installments not yet due and payable at the time of sale, and no deficiency judgment may be sought by the Capital Provider with respect to any unpaid assessment at the time of sale. The participation of the county sheriff in any such foreclosure action shall not be deemed in violation of, or inconsistent with 36.165.110 RCW limiting the role of the county in the enforcement of a C-PACER Lien.

(d) 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 chapter 61.12 RCW, or to ratify or confirm any action of the Capital Provider taken in furtherance of the foregoing, as contemplated in the County Ordinance.

(e) [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 chapter 61.12 RCW]

(f) The remedies set forth in this Section 4 of this Agreement are not intended to be the exclusive remedies of the Capital Provider, and the Capital Provider reserves any and all right and remedies now or hereinafter available, in law or in equity, for the enforcement of the C-PACER Lien, including any additional or alternative enforcement method now or hereafter permitted under RCW 36.165.

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 Jefferson, State of Washington

By: _____
Its: _____

PROPERTY OWNER:

[_____]

By: _____
Its: _____

STATE OF WASHINGTON)
)
COUNTY OF JEFFERSON)

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

WITNESS my hand and official seal.

Signature : _____ (seal)

STATE OF WASHINGTON)
)
COUNTY OF JEFFERSON)

This record was acknowledged before me on _____,

by _____,

the _____, of Jefferson County, Washington.

WITNESS my hand and official seal.

Signature : _____ (seal)

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B
QUALIFIED IMPROVEMENTS

[To be inserted]

EXHIBIT C
FORM OF NOTICE OF ASSESSMENT

[To be inserted]

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) JEFFERSON 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