

# **Assessment Agreement for C-PACER Financing**

**THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY  
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY  
(C-PACER) PROGRAM**

# Assessment Agreement for C-PACER Financing

## The Metropolitan Government of Nashville and Davidson County, Tennessee

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 Metropolitan Government of Nashville and Davidson County ("**Metro**") through its Office of the Metropolitan Trustee (the "**Trustee**" or "**Program Administrator**"), [CAPITAL PROVIDER], a [STATE] [BUSINESS ENTITY TYPE] (together with its successors and assigns, "**Capital Provider**") and [ ], the record owner(s) (the "**Property Owner**") of the fee title to the real property identified on Exhibit A (the "**Property**").

### RECITALS

**WHEREAS**, on \_\_\_\_\_, Metro established the Commercial Property Assessed Clean Energy and Resiliency Program (the "**Program**" or "**C-PACER**") through the adoption of Ordinance No. \_\_\_\_\_ ("**County Ordinance**") to allow in Davidson County the financing of certain renewable energy, energy and water efficiency, and resiliency improvements ("**Qualified Improvements**"), through the levy of contractual assessments pursuant to Tenn. Code Ann. §§ 68-205-101 et seq. (as may be amended from time to time, the "**C-PACER Act**"); and

**WHEREAS**, in the County Ordinance, Metro designated the Trustee as the Program Administrator as such term is defined in the County Ordinance and C-PACER Act; and

**WHEREAS**, the purpose and method of approval of C-PACER financing under the Program are described in the Program Guidelines established by the Program Administrator, as the same may be amended from time to time prior to the Effective Date of this Agreement (the "**Program Guidelines**"); and

**WHEREAS**, the Property is located within the boundaries of Davidson County, and Metro has consented to owners of eligible properties within Davidson County 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**, Metro through the Trustee, has reviewed such application materials to assess compliance with the C-PACER Act, the County Ordinance, and Program Guidelines, and based upon representations made by the Property Owner, Metro 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 and the Capital Provider and under which the Property Owner agrees to repay such Capital Provider (the "**Financing Agreement**"); and

**WHEREAS**, pursuant to the C-PACER Act, Metro and the Property Owner must enter into an agreement whereby the Property Owner voluntarily consents to have a special assessment levied and a lien placed on the 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 Metro enter into this Agreement; and

**WHEREAS**, the Property Owner voluntarily and willingly agrees to have a special 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, the Capital Provider and Metro 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, Capital Provider and Metro enter into this Agreement for the purpose of subjecting the Property to a C-PACER special assessment and lien to finance or refinance the purchase, installation, or construction of the Qualified Improvements on the Property as identified on the attached Exhibit B.

**Section 2. The Property.** This Agreement relates to the real property as identified on Exhibit A. The Property Owner has supplied Metro and Capital Provider current evidence of its ownership of fee title or an estate for years created pursuant to a written ground lease agreement or similar agreement to the Property and possesses all legal authority necessary to execute and deliver this Agreement.

**Section 3. Assessment and Lien.**

(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 a special assessment levied against the Property by Metro 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 and C-PACER Act (the “**Assessment**”). Upon execution and delivery of this Agreement, Metro will execute and cause to be recorded in the office of the Register of Deeds for Davidson County, together with a copy of this Agreement, pursuant to Tenn. Code Ann. § 68-205-109, 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 Metro (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 Metro against the Property without any further action required by the parties.

(c) The Property Owner hereby promises to pay to the Trustee 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 tax 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 to the accrual of delinquent interest and penalties that will be charged on the

Assessment Installment in the same manner and at the same rate for delinquent property taxes as provided for by law. Furthermore, under those circumstances, the C-PACER Lien may be subject to enforcement through a delinquent tax sale in the manner specified in Section 4, below.

(e) The Property Owner hereby certifies to Metro and Capital Provider that:

(i) The amount of the Assessment plus any existing indebtedness on the property does not exceed ninety percent (90%) of the current fair market value of the property, including any existing indebtedness on the property, as determined by a qualified appraiser in the application materials provided to Metro, with the exception that properties qualified under the federal low-income housing tax credit program set forth in 26 U.S.C. § 42 are exempt from this requirement; and

(ii) the amount of the Assessment does not exceed twenty-five percent (25%) of the current fair market value of the property as determined by a qualified appraiser.

**Section 4.**      Collection of Assessment; Assignment of Rights; Tax Sale.

(a) The Assessment Installments shall be collected in the manner specified in the County Ordinance, which shall be payable during the same time and in the same manner as ad valorem property taxes.

(b) To the extent not otherwise limited by this Agreement, Metro hereby irrevocably assigns its right to receive all installments of the Assessment required to be paid by the Property Owner pursuant to this Agreement, whether in accordance with the Assessment Schedule or upon prepayment of the Assessment in whole or in part in, and any and all sums collected pursuant to foreclosure and enforcement, together with all payments of interest due and payable under the Financing Agreement, including penalty interest if delinquent, to the Capital Provider, its successors or assigns. For the avoidance of doubt, notwithstanding amounts due pursuant to the Financing Agreement, Metro shall be entitled to retain, as provided for by law, such interest and penalties that is charged on an Assessment Installment in the same manner and at the same rate as delinquent property taxes, and, further, retain such other sums collected by or on behalf of Metro for costs incurred in pursuing a foreclosure and enforcement action. The Parties hereby acknowledge and agree that an overdue Assessment Installment will be collected by Metro through its delinquent tax attorney in the same manner that the collection of delinquent real property taxes occur, irrespective of whether real property taxes (or any other taxes, charges, or assessments) are delinquent, due and owing at the time. The Parties also acknowledge that this Agreement in no way alters Metro's method of enforcement for ad valorem property taxes on the Property, and that Metro shall have the sole discretion in determining the manner, time, and method of instituting and maintaining a foreclosure and enforcement action for a delinquent Installment Assessment, provided that Metro shall act in good faith in making such determination.

**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, Metro 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. Notwithstanding the foregoing, Metro shall not be personally liable for payment of the Assessment or an Assessment Installment as a result of Metro taking ownership of the Property at a delinquent tax sale as a result of no offers being made by bidders to purchase the Property.

(b) The balance of the C-PACER Lien that has not yet become due is not accelerated or eliminated by a delinquent tax sale based upon 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] at the time of the subdivision, unless the Financing Agreement provides that the Assessment should be allocated in an alternate manner. The Property Owner and Capital Provider agree to execute such further documents and instruments, and to take such further action as may be necessary, to carry out the purposes and intents of this subparagraph 5(c).

**Section 6.**      **Assessment Billing, Collection and Disbursement to Capital Provider.**

(a) **In General.** The Trustee agrees to collect the Assessment Installments pursuant to Section 4 hereof and remit the amount designated in the Agreement to the Capital Provider, no later than thirty (30) days after receipt of the amounts. In the event the Trustee ceases to act as the Program Administrator and there is no successor Program Administrator, Metro hereby agrees to forward the payments to the Capital Provider within thirty (30) days after receipt of said payments. Upon request, the Capital Provider agrees to promptly provide to the Trustee such reasonable information, as may be requested by Trustee from time to time, needed by the Trustee to determine the accurate collection of the Assessment Installments.

(b) **Payment Priority.** Notwithstanding any other provision to the contrary, any payment received by the Trustee, whether or not specifically designated as payment of the Assessment or an Assessment Installment, shall first be applied to any property tax, or other non-C-PACER assessment collected by the Trustee, that is due and owing for the Property at the time of the receipt of such payment before any funds are remitted to the Capital Provider; provided, however, that in consideration of a proceeding in which the ad valorem assessment of the Property is being challenged, the Property Owner shall be permitted to designate a payment or portion thereof as an amount being paid under protest as permitted under applicable law.

(c) **Delinquencies.** Amounts owed to the Capital Provider to be paid out of funds collected by the Metropolitan Delinquent Tax Attorney from a tax sale with respect to the Property pursuant to Section 4(b) for the payment of an overdue Assessment Installment, including any penalties and interest owed pursuant to the Financing Agreement and this Agreement, shall be remitted to the Capital Provider no later than thirty (30) days after receipt of said funds by the Trustee.

**Section 7.**      **Recordation of Documents.** Metro shall cause to be recorded, or will delegate to the Capital Provider to record, in the office of the Davidson County Register of Deeds the Notice of Assessment and C-PACER Lien, which includes this Agreement as an attachment, and such other documents that are attached as Exhibits to this Agreement.

**Section 8.**      **Amendment.** (a) This Agreement may be modified only by the written agreement of Metro, or any successor or assign of Metro, the Capital Provider, or any successor or assign of the Capital Provider, and the Property Owner.

(b) The Property Owner and Capital Provider each agree 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 9. Binding Effect; Assignment.** This Agreement inures to the benefit of and is binding upon Metro, Capital Provider, 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 a tax sale with respect to the C-PACER Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. The Capital Provider may assign any or all of its rights arising under this Agreement without the consent of Metro or the Property Owner, provided the Capital Provider provides notice of the assignment to Metro and the Property Owner.

**Section 10. No Liability of Metro.** Pursuant to the C-PACER Act, Metro, including its governing body, officers, employees, agents or contractors, shall not be liable at law or equity for actions taken pursuant to this Agreement, excepts in cases of gross negligence, recklessness, or willful misconduct. In no event shall Metro be personally liable for payment of the Assessment or Assessment Installments.

**Section 11. Indemnification.** Property Owner agrees to defend, indemnify and hold the County, its governing body, officers, employees, agents or 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 Metro shall not apply to liability for damages to the proportionate extent caused by or resulting from the sole or contributory negligence or willful misconduct of Metro, governing body, officers, employees, agents or contractors. Property Owner agrees to defend, indemnify and hold the Capital Provider, its directors, officers, employees, agents and representatives harmless hereunder in the same manner provided in the Financing Agreement.

**Section 12. Governing Law; Venue.** This Agreement is governed by and construed in accordance with the laws of the State of Tennessee. Any legal action brought under this Agreement must be instituted in a court of competent jurisdiction located in Davidson County, Tennessee.

**Section 13. 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 14. Miscellaneous.**

(a) **Additional Representations.** Property Owner covenants, certifies and agrees that: (i) it has not made and will not make to Metro any untrue statement of material fact, nor has it omitted to state a material fact necessary to make any statement made not misleading, regarding this Agreement or in relation to its application and participation in the C-PACER Program; (ii) that the ownership or legal title to the Property is not in dispute; (iii) if applicable, has obtained consent for the Assessment from each holder of a mortgage or deed of trust securing indebtedness on the Property, and that such Assessment does not constitute an event of default under such mortgage or deed of trust; and (iv) has familiarized itself with the C-PACER Program including the provisions of the Metropolitan Code of Laws, the Act, and this Agreement and related documents, and further understands the risks and costs associated with participating in the C-PACER Program, including, without limitation, the risk to the Property from failure to pay the Assessment as provided for in this Agreement.

(b) Authorizations. Each Party respectively certifies that it has received all consents and approvals necessary and is duly authorized to execute and deliver this Agreement.

(c) Notices. Any notice or communication required hereunder shall be delivered, mailed by first class mail postage prepaid, or over delivery services to the parties as follows:

Property Owner:

[Address]

Metro:

[Address]

*with a copy to:*

[Department of Law address]

Capital Provider:

[Address]

The address of any party may be changed by notice to each other party given in the same manner as provided in this subparagraph (c).

(d) Tennessee Public Records Act. The Property Owner and Capital Provider each acknowledge that Metro is a “public agency” for purposes of the Tennessee Public Records Act (the “Act”), Tenn. Code Ann. § 10-7-501, et seq., and for the purposes of the Act, any information or documents received by Metro related to this Agreement or participation of either in the C-PACER Program will be considered a public record and may be subject to public disclosure unless and exceptions exists under applicable law.

(e) No Partnership or Agency. Nothing in this Agreement, or participation in the C-PACER Program, shall be constructed to create a relationship between the parties of agent, servant, employee, partnership, joint venture or association.

**Section 15. 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 Metro 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.

**THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY,  
TENNESSEE**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PROPERTY OWNER:**

**[PROPERTY OWNER]**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CAPITAL PROVIDER:**

**[CAPITAL PROVIDER]**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**METRO'S ACKNOWLEDGEMENT**

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Before me, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged [her/him]self to be the \_\_\_\_\_ of the \_\_\_\_\_, the within-named bargainor, a county, and that [s/sh]e as such \_\_\_\_\_, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the county by [her/him]self as such \_\_\_\_\_.

WITNESS my hand and seal at office, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
[seal]

**PROPERTY OWNER'S ACKNOWLEDGEMENT**

STATE OF TENNESSEE     )  
COUNTY OF DAVIDSON    )

Before me, the undersigned, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged [him/her]self to be \_\_\_\_\_ (office held) of \_\_\_\_\_, the within named bargainer, a [corporation / limited liability company / limited partnership / general partnership], and that [s/h]e as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the [corporation / company / partnership] by him/herself as \_\_\_\_\_.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires: \_\_\_\_\_

**CAPITAL PROVIDER'S ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged [him/her]self to be \_\_\_\_\_ (office held) of \_\_\_\_\_, the within named bargainer, a [corporation / limited liability company / limited partnership / general partnership], and that [s/h]e as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the [corporation / company / partnership] by him/herself as \_\_\_\_\_.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**

[To be inserted]

Being the same property conveyed to the Property Owner pursuant to a deed of record as \_\_\_\_\_ in the office of the Register of Deeds of Davidson County, Tennessee.

**EXHIBIT B**  
**QUALIFIED IMPROVEMENTS**

[To be inserted]

**EXHIBIT C**  
**FORM OF NOTICE OF ASSESSMENT**

[To be inserted]

**EXHIBIT D**

**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								
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