



Memphis City Council Summary Sheet

- 1. Description of the Item (Resolution, Ordinance, etc.)**

This ordinance adopts a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program within Memphis, Tennessee.
- 2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

EDGE and Division of Planning and Development
- 3. State whether this is a change to an existing ordinance or resolution, if applicable.**

This is not a change to an existing ordinance or resolution.
- 4. State whether this requires a new contract, or amends an existing contract, if applicable.**

This resolution does not require a new contract nor amend an existing contract.
- 5. State whether this requires an expenditure of funds/requires a budget amendment.**

N/A

ORDINANCE NO. _____

AN ORDINANCE adopting ____ Municipal Code Chapter ____ Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program within Memphis, Tennessee.

WHEREAS, per Tenn. Code Ann. §§ 68-205-101 et seq., the State Legislature granted local 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 flood mitigation, stormwater management, wildfire and wind resistance, energy storage, microgrids, and fire suppression; and

WHEREAS, the C-PACER program authorized in Tenn. Code Ann. §§ 68-205-101 et seq. promotes voluntary energy efficiency, energy conservation, and resiliency and 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 City 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 CITY OF MEMPHIS COUNCIL, STATE OF TENNESSEE, AS FOLLOWS:

Section 1. New. A new section is added to the _____ Municipal Code to read:

_____ Municipal Code ____ Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program

____.010	Establishment
____.020	Definitions
____.030	Territory
____.040	Program Administration
____.050	C-PACER Financing
____.060	C-PACER Lien
____.070	Application and Review
____.080	Program Guidebook
____.090	Collection and Enforcement
____.100	Fees
____.110	Enactment

___.120 No Liability, and No Public Funds.

___.010 Establishment

There is hereby established within the boundaries of Memphis, Tennessee (the “City”) a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) program (the “Program”) in accordance with chapter Tenn. Code Ann. §§ 68-205-101 et seq. (the “C-PACER Act”). The City finds that it is convenient and advantageous to establish the Program, at no net cost to the City, in order to finance Qualified Projects (as hereinafter defined), repaid by voluntary annual assessment installment payments 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.

___.020 Definitions

The definitions in this section apply throughout _____ Municipal Code __. __ unless the context clearly requires otherwise:

1. “Application checklist” means the list of items in a Program Application required by the C-PACER Act, this ordinance, the Program Guidebook, and the corresponding documentation that the City accepts in order to show the requirements of the C-PACER Act have been met;
2. “Assessment” means the voluntary agreement of a Record Owner pursuant to an Assessment Agreement to allow the City to require the payment of annual Assessment Installments on their property in an amount sufficient to re-pay C-PACER Financing, together with interest, penalties, fees and charges related thereto;
3. “Assessment Agreement” means an agreement between the City and a Record Owner whereby the City agrees to place an Assessment to re-pay C-PACER Financing and C-PACER Lien on the property to secure the obligation to repay the financing;
4. “Assessment Installment” means annual payments assessed against property to repay C-PACER Financing;
5. “Capital Provider” means a private third-party entity, including its designee, successor, and assigns that makes or funds C-PACER Financing, including refinancing;
6. “C-PACER Financing” means an investment from a Capital Provider to a Record 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 Record 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 or other service contract, for the installation or modification of a Qualified Improvement;

7. "C-PACER Lien" means the lien recorded at the Shelby County Register of Deeds on the Eligible Property to secure the C-PACER Financing, which remains on the property until the C-PACER Financing is paid in full;
8. "Eligible Property" means (a) privately owned commercial, industrial, or agricultural real property, (b) privately owned residential real property consisting of five (5) or more dwelling units, (c) property owned by nonprofit, charitable, or religious organizations, and (d) property owned by pseudo-governmental organizations such as Industrial Development Corporations, Housing Authorities, or Health Educational and Housing Facility Boards. Pawn shops, adult entertainment and product stores, liquor and tobacco stores, payday loan and title loan establishments, as well as other business types determined in the Local Government's sole discretion shall not be considered Commercial Property;
9. "Fair Market Value" means the as-appraised value, as determined by a state-certified appraiser, as if the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts;
10. "Financing Agreement" means the contract under which a Record Owner agrees to repay a Capital Provider through Assessment Installments 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;
11. "Local Government" means the governing body, any department, or any office within the government for the City of Memphis;
12. "Program" means the C-PACER program established under this ordinance;
13. "Program Administrator" means the party designated by the Local Government to administer the C-PACER Program. This party may be the Local Government itself or an independent third party, whether it be private, quasi-public or public, designated by the Local Government, provided that the administration procedures used conform to Tenn. Code Ann. § 68-205-101, *et seq.*, and this chapter;
14. "Program Guidebook" means documents that, collectively, are incorporated in Exhibit A of this ordinance, including the Assessment Agreement and the Notice of Assessment Interest and C-PACER Lien;
15. "Program Application" means the application submitted to demonstrate that a proposed project qualifies for C-PACER Financing and for a C-PACER Lien;
16. "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) Increase resilience and support the production of clean, renewable energy, including through the use of 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;
 - (c) 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;
 - (d) Allow for the reduction or elimination of lead from water that may be used for drinking or cooking;
 - (e) Increase water or waste water resilience, including through storm retrofits, flood mitigation, and stormwater management, or wind resistance, energy storage, microgrids, and other resilience projects approved by the Local Government;
 - (f) Electrical vehicle charging infrastructure;
 - (g) Conform to requirements of the most recent version of the International Energy Conservation Code adopted by the Local Government; or
 - (h) Conform to seismic requirements of the most recent version of the International Building Code adopted by the Local Government.
17. "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, including Qualified Improvements installed no more than two (2) years prior to the date of application. Together, Qualified Improvements, inclusive of all related and eligible costs pursuant to the C-PACER Act that are to be financed as described in a Program Application and approved by the Program Administrator, are a Qualified Project. If the Program Administrator is a Capital Provider, the Local Government must also approve the project for it to be a Qualified Project. The minimum project size for a Qualified Project is one that costs \$1,000,000.00; and
18. "Record Owner" means the owner or owners on title, duly recorded, of a Commercial Property, the owner listed on the property's legal documents on file or the owner of an estate for years created pursuant to a written ground lease agreement or similar agreement.

___.030 Territory

The Program shall be available to all Eligible Property within the boundaries of the Region, in accordance with the C-PACER Act. This includes both unincorporated and incorporated areas of the City. The Region is the incorporated and unincorporated areas of the City, excluding areas zoned for residential property only, as shown in the map attached to this Ordinance.

___.040 Program Administration

1. Pursuant to the C-PACER Act, the Local Government designates the Economic Development Growth Engine Industrial Development Board of the City of Memphis and the County of Shelby, Tennessee (“EDGE”) as the Program Administrator. If EDGE is no longer the Program Administrator for any reason, then the Local Government will either assume the role of Public Administrator or designate a new third-party entity to serve as Public Administrator. The Program Administrator shall review and approve the Program 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 Record Owner and Capital Provider.
2. The Program Administrator is authorized to impose fees to offset the actual and reasonable costs of administering the Program. The fees may be assessed as part of the Program Application, to be paid by the Record Owner requesting to participate in the Program. Service fees of approved applications must be calculated as one percent (1%) of the total amount financed, not to exceed fifty thousand dollars (\$50,000.00). Service fees retained by a Capital Provider acting as the designated Program Administrator must be placed into a reserve account and utilized for costs related to the billing, collection, and enforcement of the special assessment and lien. If the Local Government does not select a Capital Provider as its designated Program Administrator, then the funds must be placed into an account designated by the Program Administrator.

___.050 C-PACER Financing

1. C-PACER Financing, under the C-PACER Act, 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 the Qualified Improvement plus the costs of materials and labor necessary for the 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, in an amount determined by the Record Owner and the Capital Provider for a period of **[insert number of years]**;
 - i. Interest reserves; and
 - j. Any other fees or costs that may be incurred by the incident to the installation, modification, or improvement of a Qualified Improvement on a specific or pro rata basis, as determined by the Local Government.
3. The interest rates imposed upon the Assessment are subject to the usury laws of the state of Tennessee and shall not exceed the maximum allowed interest rates. The Capital Provider may not impose variable interest rates upon the Assessment.
 4. The assessment of the property cannot exceed:
 - a. Ninety percent (90%) of the Fair Market Value of the property prior to the completion of all planned real property improvements, as determined by a state-certified appraiser; and
 - b. Twenty-five percent (25%) of the Fair Market Value of the Property at the time of the completion of all planned real property improvements, as determined by a state-certified appraiser.
 5. Prior to entering into a Financing Agreement, the Capital Provider must receive written consent from every holder of a deed of trust or mortgage 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.

___.060 C-PACER Lien

1. The C-PACER Lien amount, plus any interest, penalties, fees 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, provided existing mortgage holders, if any, have provided written consent described in Section .050(3); and
 - b. Is a first and prior lien, equal to the 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, fees and charges accrued

or accruing are paid in full.

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 enforcement of the C-PACER Lien by tax sale 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 Assessment Installments incur interest and penalties as specified in the Financing Agreement.
4. After the C-PACER Lien is recorded as provided in this Ordinance, the Assessment, C-PACER Financing 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.

___.__.070 Application and Review

1. A Record Owner and Capital Provider shall complete a Program Application and submit it to the Program Administrator for review.
2. The Program Application shall require:
 - a. An attestation by the Record Owner that the project consists of one or more “Qualified Improvement” as defined by ___.__.020(14).
 - b. For an existing building seeking improvements:
 - (a) Where energy or water usage improvements are proposed:
 - (1) A certification by a licensed engineering firm, engineer, or other qualified professional listed in the Program Guidebook, with the licensed professional’s stamp affixed to the certification, 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, or the addition of renewable sources of energy or water; and
 - (2) An analysis by a licensed professional explaining how the proposed Qualified Improvements will either 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;
 - (b) Where safe drinking water measures are proposed:
 - (1) A certification by a licensed professional engineer, with the licensed professional engineer’s stamp affixed to the certification, stating that the Qualified Improvements will result in the reduction

of lead in potable water; and

(2) An analysis by a licensed professional engineer explaining how the Qualified Improvements will result in the reduction of lead in potable water; or

(c) Where resilience improvements are proposed:

(1) A certification by a licensed professional engineer, with the licensed professional engineer's stamp affixed to the certification, stating that the Qualified Improvements will result in improved resilience and an analysis explaining how the Qualified Improvements will result in improved resilience; and

(2) An analysis by a licensed professional engineer explaining how the Qualified Improvements will result in improved resilience and an analysis explaining how the Qualified Improvements will result in improved resilience.

c. For new construction, an applicant must provide:

(a) A certification by a licensed professional engineer, with the licensed professional engineer's stamp affixed to the certification, stating that the proposed Qualified Improvements, individually, or acting as a whole, will enable the project to exceed the energy efficiency, water efficiency, renewable energy, renewable water, or resilience requirements of the current building code of the City; and

(b) An analysis explaining how the Qualified Improvements, individually, or acting as a whole, will enable the project to exceed the energy efficiency, water efficiency, renewable energy, renewable water, or resilience requirements of the current building code of the City.

3. The Program Administrator shall review the Program 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 Application Checklist indicating that the Program Application is deemed approved and the project is a Qualified Project. If a Program 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 Program Application is denied, the reasons for the denial, and any corrections that could make the Program Application acceptable. If feasible, the applicant shall have an opportunity to correct the Program Application.
4. Upon approval of a Program Application, a Record Owner or Capital Provider shall provide the completed (1) the Assessment Agreement; (2) the Notice of Assessment

Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; (7) MLGW Compliance Certificate, if applicable, and (8) Program Application Checklist for execution at least ten (10) days prior to close of the C-PACER transaction, along with a requested date for recordation of such forms.

5. The Program Administrator, on behalf of the Local Government, shall record in its real property records (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; (7) MLGW Compliance Certificate, if applicable, and (8) Program Application Checklist at the date requested by the Record Owner and Capital Provider or, at the request of the Record Owner and the Capital Provider, the executed documents may be delegated to the Capital Provider.
6. For a Record Owner and Capital Provider whose Program Application is denied by the Local Government's Program Administrator, either party, or both, may request an adjudicative proceeding before the Local Government's adjudicative body, consistent with the Local Government's rules and subject to the applicable provisions of Tennessee's Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 et seq.

___.080 Program Guidebook

1. The C-PACER Program shall be administered in accordance with the requirements contained in the Program Guidebook established by the Program Administrator from time to time.
2. The Program Guidebook and forms may be amended by the Program Administrator without approval by the Memphis City Council, provided that such amendments comply with the C-PACER Act and other applicable law.

___.090 Collection and Enforcement

1. Collection of Assessment Installments and enforcement of C-PACER Liens due to delinquent Assessment Installments, including enforcement by tax sale, shall be enforced in the same manner that a property tax lien against commercial property is enforced by the Local Government.
2. The Local Government hereby designates the Memphis City Treasurer to collect Assessment Installments and enforce C-PACER Liens due to delinquent Assessment Installments. The Memphis City Treasurer shall remit any and all Assessment Installments it collects to the Capital Provider to whom the payment is due within ninety (90) days of receipt thereof.

___.100 Fees

An application fee shall be paid to the Local Government when the Program Application is submitted. The amount of the fee shall be determined by the Program Administrator. Pursuant to the Program Guidebook, the Program Administrator shall establish a fee that makes the costs of

the C-PACER program cost-neutral to the Local Government and Program Administrator provided, however that the fees for any Assessment may not exceed 1% of the applicable C-PACER Financing and shall not in any case exceed \$50,000.00.

___ . ___.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 Municipal Code or violation of any provision of the Code 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 Code. In the event and to the extent of a conflict between this ordinance and the C-PACER Act, the C-PACER Act shall govern.

___ . ___.120 No Liability.

Except for a right of action to enforce the terms of this ordinance, this ordinance does not confer any right of action nor property interest upon any party to a C-PACER transaction against the Local Government or the Program Administrator, and, so long as the Local Government or Program Administrator comply in good faith with the terms of the C-PACER Act and this ordinance, neither the Local Government nor the Program Administrator shall incur liability for enacting this Program, nor shall the Local Government, its governing body, executives, or employees nor the Program Administrator, its governing body, executives, or employees be personally liable as a result of exercising any rights or responsibilities granted under this ordinance.

Section 2. Effective Date. This ordinance shall be effective on _____.

ADOPTED on this _____ day of _____, 20__.

Draft
June 24, 2022

**PROGRAM GUIDEBOOK:
C-PACER PROGRAM

MEMPHIS, Tennessee**

Table of Contents

I.	Introduction	2
II.	Benefits of C-PACER	3
III.	C-PACER Financing Program Rules	4
1.	Establishment of a C-PACER Program Boundaries	4
2.	Administration of Program; Authorized Officials	4
3.	Eligibility Requirements	5
4.	Application Process	7
5.	Application Documents	8
6.	Closing Documents	9
7.	Method of Determining Interest Rates	9
8.	Billing and Collection of Assessments	9
9.	Enforcement of C-PACER Lien	10
10.	Program Fee	10
11.	Term of an Assessment; Calculation of Useful Life of Qualified Improvements	10
12.	Form of Closing Documents	10
13.	Written Consent from Lienholder(s) Required	11
14.	Provisions for Marketing and Participant Education	11
15.	City Has No Liability or Financial Responsibility	11

I. Introduction

ABOUT C-PACER

The City of Memphis (the “City”) administers a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing program (the “C-PACER Program” or the “Program”) under Tennessee Code Annotated 68-205-101 et seq. (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 improvements. While the financing is repaid to the Capital Provider, the C-PACER Act directs the City to levy a voluntary assessment and record a lien (the “C-PACER Lien”) on the property. This approach to financing has been used by programs like C-PACER on thousands of properties in more than 24 states and the District of Columbia.

In 2021, the Tennessee State legislature passed C-PACER enabling legislation, T.C.A. § 68-205-101, *et seq.*, which was recently amended in 2022. This legislation allows counties, municipalities and local jurisdictions to establish Commercial Property Assessed Clean Energy and Resilience (C-PACER) programs. The legislation emphasized allowing resilience improvements, adding an “R” to the popular acronym. C-PACER allows Record Owners to access financing for qualifying energy efficiency, renewable energy, water conservation, and resiliency improvements for qualifying buildings. Improvements made to reduce lead in drinking water also qualify as improvements.

Individual counties and municipalities may now take action to create their own C-PACER programs and help buildings become more efficient and resilient. Creating a City C-PACER program is simple: first, the City adopts an ordinance and guidelines that govern how its C-PACER program works. Second, since the repayment of the C-PACER financing is between a private lender and a Record Owner, when the lender’s lien against the property is filed, the City only has to review the lien application for compliance with the C-PACER state law, and then record a unique agreement that includes the acknowledgment of a special property “assessment” by the City.

In Tennessee, C-PACER financing is available in four categories: energy efficiency, renewable energy, water conservation, and resiliency improvements. Improvements that reduce greenhouse gas emissions would qualify, provided that the improvements also conserve energy or result in renewable energy improvements. A voluntary C-PACER loan is secured by a senior lien on the property and paid back over time; tax liens and other government assessments are equal in priority to the C-PACER lien. Like other assessments, C-PACER financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whomever owns the property at the time. The C-PACER repayment obligation transfers automatically to the next owner if the property is sold. In the event of default, only the payments in arrears are due. This arrangement spreads the cost of qualifying improvements – such as energy-efficient HVAC equipment, upgraded insulation, new windows, or solar installations – over the useful life of the measures.

The Program exists as a function of Tennessee’s C-PACER legislation and the rules established by the City. No change in the Program or in Tennessee’s C-PACER legislation will affect a Record Owner’s obligations to pay C-PACER assessments incurred under the Program prior to such changes.

II. Benefits of C-PACER

C-PACER offers benefits to building owners, developers, municipalities, mortgage holders, and building professionals.

For Building Owners and Developers: One of the biggest barriers to converting potential projects to completed projects for efficiency and resiliency upgrades are the up-front cost of the types of measures identified in the statute as qualifying improvements. C-PACER financing typically requires little up-front investment, and qualifying improvements improve property value. Energy efficiency measures, in particular, also lower operating costs. In addition, C-PACER financing has the following benefits:

- **Up to 100%, long-term financing.** Many owners lack the capital to complete efficiency and resiliency improvements. All direct and indirect costs incidental to the qualified improvements can be wrapped into C-PACER financing.
- **Transferrable upon sale.** Some owners may want to sell the building before the financing is repaid. The C-PACER lien and assessment are attached to the property and transfers to the new owner.
- **Cash flow benefits.** C-PACER financing may be repaid over the useful life of the improvements, which because of the long-term financing options can have positive effects on cash flow.
- **Triple-net and full-net leases may allow pass-through of assessment installments to tenants.** Under triple/full net leases, C-PACER payments can be passed along to tenants, who also typically derive benefit from any energy savings through reduced operating costs.

For Energy Auditors, Architects, Building Engineers, and Contractors: By allowing a Record Owner to access 100% up-front financing for longer terms than are typically available for conventional financing, more substantial efficiency and resiliency improvements are now more affordable with C-PACER. Energy auditors, architects, engineers, and contractors can suggest C-PACER financing as a way for their clients to implement needed energy or resiliency upgrades that might otherwise be unaffordable. Since the demand for building efficiency and resiliency improvements will grow in a C-PACER-enabled jurisdiction, C-PACER is a powerful business growth catalyst for building professionals like energy auditors and contractors.

For Local Jurisdictions: C-PACER is an economic development tool. By making it more affordable for building owners to make major improvements to their buildings, local building stock value is enhanced, and more jobs are created. Energy and resiliency upgrades create a more competitive environment for retaining and attracting new businesses by lowering energy costs and improving the structural soundness of buildings. Upgraded buildings can generate higher property tax payments for the City. Energy upgrades also typically reduce greenhouse gases and other pollutants, which facilitates adherence to City or state climate action plans or goals.

For Existing Lien Holders: C-PACER improvements can enhance property value and typically improve a building's longevity, thereby reducing the risk of property value decline over time. In addition, C-PACER financing is non-accelerating, meaning only current or past due annual payments can be collected each year while future payments stay with the property. As such, existing mortgage holders see their collateral

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improved without substantial increase in credit risk and with only a modest impact on lien priority. C-PACER financing is not permitted without the consent of all existing lien holders and, under certain circumstances, the holders of certain other obligations encumbering commercial residential property.

III. C-PACER Financing Program Rules

This Program Guidebook (the “Guidebook”) is prepared as required by the C-PACER Act, at the direction of the City, and is approved in connection with, and as an attachment to, the enabling ordinance for this program (the “C-PACER Ordinance”) dated _____. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Ordinance.

The Guidebook establishes guidelines, eligibility, approval criteria, and an application form for the administration of the C-PACER Program for the City. The C-PACER Program enables financing for commercial Record Owners (“Record Owners”) to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a “Qualified Improvement”) as described in the C-PACER Act and further clarified in this Guidebook.

Qualified Improvements, including all eligible costs that are to be financed as described in a project application (the “Project Application”) approved by the Program, constitute a “Qualified Project.” Record Owners may receive funding for their Qualified Improvements only from qualified private investors (“Capital Providers”) pursuant to a separate Financing Agreement negotiated between the Record Owner and Capital Provider (a “Financing Agreement”).

In the following numbered subsections, a reader can find information about:

- Statutory and programmatic eligibility requirements for C-PACER project financing in Tennessee State, and
- The appropriate steps and forms needed for a City to receive and process a C-PACER project lien application.

1. Establishment of C-PACER Program Boundaries

The City adopted Ordinance number _____ on _____, establishing the C-PACER Program for all eligible commercial properties within the boundaries of the City. The Region is illustrated in Exhibit 2.

2. Administration of Program; Authorized Officials

The Economic Development Growth Engine Industrial Development Board of the City of Memphis and the County of Shelby, Tennessee (“EDGE”) is designated and authorized to review each Project Application to confirm that it is complete and contains no errors on its face. EDGE will then execute the Assessment Agreement and C-PACER Lien documents on behalf of the City and record them with the real property records.

As part of Program operation, EDGE will:

- Accept Project Applications (see Attachment A, Application) from Record Owners and Capital Providers for prospective C-PACER projects;
- Review the Project Application to determine conformance with the Application Checklist (See Attachment B);
- Approve/conditionally approve/disapprove the Project Application and communicate to applicant;
- Execute (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien;

- (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; and (7) Program Application Checklist; and
- Record the (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; and (7) Program Application Checklist

3. Eligibility Requirements

Eligible Property means privately owned commercial, industrial, or agricultural real property, or privately owned residential real property consisting of five (5) or more dwelling units, property owned by nonprofit, charitable, or religious organizations, and property owned by pseudo-governmental organizations such as Industrial Development Corporations, Housing Authorities, or Health Educational and Housing Facility Boards. Pawn shops, adult entertainment and product stores, liquor and tobacco stores, payday loan and title loan establishments, as well as other business types determined in the Local Government's sole discretion shall not be considered Commercial Property.

Ground leases on Eligible Property are permitted, so long as all requirements of the C-PACER Ordinance are met, including requiring the Record Owner to enter into an Assessment Agreement. On ground-leased property, therefore, the assessment and C-PACER Lien encumber the fee interest in the property, not the ground leasehold.

The Eligible Property must be assessed by a state-certified appraiser. That assessment cannot exceed: (1) 90% of the fair market value prior to the completion of all planned real property improvements, and (2) 25% of the fair market value of the property at the time of the completion of all planned real property improvements.

Minority and Women Owned Business Enterprise Participation means that anyone utilizing this Program on a Qualified Project shall use a "best faith effort" to reach no less than 25% Minority/Women Business Enterprise (MWBE) participation on the Qualifying Costs.

Record Owner means the owner or owners on title, duly recorded, of a Commercial Property, the owner listed on the property's legal documents on file or the owner of an estate for years created pursuant to a written ground lease agreement or similar agreement.

The Record Owner may be any type of business, corporation, individual, or non-profit organization.

Qualified Improvements means a permanent improvement costing no less than \$1,000,000.00 affixed to the real property that must meet at least one of these criteria:

- 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; ("Energy Efficiency Improvement");
- 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 ("Renewable Energy Improvement");

- 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, or allow for the reduction in demand (“Water Efficiency Improvement”);
- Reduce or eliminate lead from water which may be used for drinking or cooking (“Safe Drinking Water Improvement”);
- Increase water and waste water resilience, including through storm retrofits, flood mitigation, and stormwater management, or wind resistance, energy storage, microgrids, and other resilience projects approved by the City (“Resiliency Improvement”);
- Electrical vehicle charging infrastructure;
- Conform to the requirements of the most recent version of the International Energy Conservation Code adopted by the City; or
- Conform to seismic requirements of the most recent version of the International Building Code adopted by the City.

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of a Qualified Improvement permanently affixed to an Eligible Property.
- Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed for no more than two (2) years prior to the date of Project Application.

Qualifying Capital Provider may be any private third-party entity, including its designee, successor, and assigns, that makes or funds C-PACER financing, including refinancing

Qualifying costs that can be C-PACER financed must exceed \$1,000,000.00 and can include:

- The cost of the Qualified Improvements plus the costs of materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Financing or origination fees;
- Program application and administrative fees;
- Project development, architectural and engineering fees;
- Capitalized interest in an amount determined by the Record Owner and the Capital Provider not to exceed the maximum rate allowed by Tennessee law;
- Interest reserves;
- Any other fees or costs that may be incurred by the Record Owner incident to the installation, modification, or improvement on a specific or pro rata basis.
- See also the definition of Total Eligible Construction Costs in Section 5(5)(D).

4. Application Process

The Tennessee C-PACER statute reduces the administrative burden on participating counties, municipalities and local jurisdictions as much as possible. Thus, EDGE will review the Application for proof of compliance with the requirements of the statute that are necessary for EDGE to approve the application and execute the applicable documents for the proposed C-PACER transaction. All applicants are encouraged to review the Project Application Checklist accompanying the Application to ensure that the types of information that EDGE will rely upon to verify compliance with the statute are present in the completed Application.

The process of obtaining financing under the Program starts when a Record Owner approaches a Capital Provider. The Capital Provider will work with the Record Owner to collect a number of diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties should settle on the loan terms.

The general flow of the C-PACER application process will be as follows:

- (1) The Record Owner and the Capital Provider prepare the Project Application, consisting of the Project Application Checklist and all supporting documents (described below). Applicants are encouraged to review the Project Application Checklist accompanying the Project Application to ensure that the types of information that EDGE will rely upon to verify compliance with the C-PACER Act and C-PACER Ordinance are present in the completed Project Application.
- (2) EDGE will accept applications until the first Wednesday of each month. EDGE shall take no longer than ten (10) business days to evaluate the application and officially act at a regularly scheduled meeting (typically on the third Wednesday of the month) or at a specially called meeting with required notice.
- (3) EDGE's application review process is confined to confirming that the Project Application is complete and all attachments conform to these guidelines. ***EDGE's approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.*** EDGE will review the Project Application for proof of compliance with the requirements of the C-PACER Act and C-PACER Ordinance that are necessary for EDGE to approve the Project Application and execute the applicable documents for the proposed C-PACER transaction. Incomplete Project Applications will be returned to the applicant, and EDGE will notify the applicant about which items from the Project Application Checklist were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Checklist, the Project Application will be approved, and the approval communicated in writing to the applicant.
- (4) The Project Application may be conditionally approved if the application is complete but the attachment regarding lender consent is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below.
- (5) Upon receipt of approval, the Capital Provider will draft the following "Closing Documents": (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; and (7) Program Application Checklist. At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.

- (6) If the Project Application received conditional approval, the Closing Documents executed by EDGE may not be released from escrow unless and until all lender consents have been received and executed in accordance with the C-PACER Act and C-PACER Ordinance.
- (7) At closing, EDGE will record the Closing Documents in the Office of the Register of Deeds for Shelby County. At the election of the applicant, EDGE may delegate the recording of the Closing Documents to the applicant or their designee(s).
- (8) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement.
- (9) The Record Owner begins making assessment payments per the Assessment Agreement and in accordance with the Financing Agreement

5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Checklist (form attached)
- Lienholder(s) Consent (form attached)
- Economic Benefits Certification (form attached): The applicant will certify that the economic benefits of the Qualified Improvements exceed the costs of the assessment.
- Certificate of Qualified Improvements:
 - (1) For Renewable Energy Improvements, Energy Efficiency Improvements, or Water Efficiency Improvements on an existing building: A certification stating that the proposed Qualified Improvements will result in either the 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.
 - (2) For Safe Drinking Water Improvements on an existing building: A certification stating that the proposed Qualified Improvements will result in the reduction of lead in potable water.
 - (3) For Resilience Improvements on an existing building: A certification that the Qualified Improvements will result in improved resilience, which may include, without limitation, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
 - (4) For new construction: A certification that each proposed Qualified Improvement or the building as a whole will enable the subject property to exceed the energy efficiency or, water efficiency or, renewable energy or, renewable water, or resilience requirements of the current building code requirements of the City.
 - (5) For all Qualified Improvements, the aforementioned certifications (in subsections #1-4) must be completed by either a licensed Professional Engineer or an authorized representative of a licensed engineering firm. The certifying individual may hold additional licenses or qualifications demonstrating their qualifications. The certifying individual must inspect the installation of the Qualified Improvements and provide a stamped inspection report from a Professional Engineer licensed with the State of Tennessee to EDGE attesting all improvements have been installed to applicable code requirements and/or product specifications.

6. Closing Documents

The following documents require the signature of EDGE and shall be part of the closing of any C-PACER transaction. Each document must be substantially similar in substance to the forms provided, although it is expected that Record Owners and Capital Providers will negotiate variations tailored to their specific projects.

- Project Application Checklist
- Assessment Agreement
- Notice of Assessment Interest and C-PACER Lien
- Economic Benefits Compliance Certificate
- Energy Water Resilience Compliance Certificate
- Mortgage Holder Consent
- MLGW Compliance Certificate (if applicable)
- Certificate of C-PACER Completion

7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Record Owner and the Capital Provider, but may not exceed the maximum rate allowed under Tennessee law. EDGE has no role in reviewing, setting, or opining on such interest rates or other aspects of the Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk –will affect the terms negotiated by the Record Owners and Capital Providers.

8. Billing and Collection of Assessments

Billing, collection and enforcement of delinquent C-PACER Liens or C-PACER financing installment payments will be handled by the Memphis City Treasurer using the same process that it uses for collecting ad valorem property taxes.

9. Enforcement of C-PACER Lien

The Memphis City Treasurer will enforce the C-PACER Lien through the same tax sale mechanism that it uses to enforce the liens for ad valorem property taxes.

10. Program Fee

EDGE, as compensation for time and costs incurred in the establishment of the C-PACER Program, including the C-PACER Ordinance, this Guidebook, the draft documents, as well as for reviewing a Project Application for completeness and executing the Assessment Agreement and C-PACER Lien is entitled to a fee equal to 1% of the amount financed by the Record Owner, not to exceed \$50,000. The Record Owner must pay this fee to EDGE at the closing of the transaction between the Record Owner and the Capital Provider, and such payment is a condition precedent to recording. EDGE shall invoice the applicant, collect the Program Fee and distribute 50% of the fee collected to the City of Memphis Department of Finance.

11. Term of an Assessment; Calculation of Useful Life of Qualified Improvements

The maximum term of an assessment may not exceed the useful life of the Qualified Improvement, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.

12. Form of Closing Documents

The Program has adopted form Closing Documents: The Assessment Agreements and Notice of Assessment Interest and C-PACER Lien. A Record Owner and Capital Provider may adapt the forms to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the forms.

The forms are attached in the Exhibits below and respectively incorporated herein as referenced

13. Written Consent from Lienholder(s) Required

Before entering into an Assessment Agreement with the City, the Capital Provider must obtain, and the Project Applications must show proof of, written consent for the placement of the assessment and C-PACER Lien from any holder of a mortgage or a deed of trust interest in the real property.

If the consents are executed at closing, the signatures of EDGE to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the Memphis City Treasurer, an amended Project Application with the consents attached must be sent to the Memphis City Treasurer. Capital Providers are responsible for providing their own form of consent that conforms to the C-PACER Ordinance and C-PACER Act.

14. Provisions for Marketing and Participant Education

This Guidebook will be made available to the public on the EDGE website. It is determined that there is no need for marketing and participant education at this time. It is presumed that Record Owners and Capital Providers understand the principles and processes associated with C-PACER financing and will look to the Guidebook for understanding and clarification of the City Program.

15. Neither City Nor EDGE Has No Liability or Financial Responsibility

Neither the City, its governing body, executives, or employees, nor EDGE, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program. Neither the City nor EDGE shall pledge, offer, or encumber its full faith and credit for any lien amount under the C-PACER program. No public funds may be used to repay any C-PACER financing obligation.

Draft
June 24, 2022

[EXHIBITS TO BE INSERTED]

APPLICATION INFORMATION	APPLICANT-PROVIDED INFORMATION	ACCEPTED DOCUMENTATION	VERIFIED / NOTES
PROPERTY ADDRESS		<p>DEED TITLE INSURANCE REPORT ASSESSOR OFFICIAL RECORD</p> <p>The address must be within the County.</p>	
PROPERTY OWNER:	<p>Legal name(s) of Owner(s) (LIST ALL):</p> <p>Name of contact person:</p> <p>Phone number:</p> <p>Email address:</p>	<p>DEED TITLE INSURANCE REPORT</p> <p>All names must match exactly what is on the Title Insurance Report and Assessor Official Record</p> <p>If the name(s) is different:</p> <p>Certified copy of personal/corporate name change; Certified copy of merger/sale document reflecting name change; Certified copy of Power of Attorney</p>	
QUALIFYING PROPERTY	<p>is this Property:</p> <p>_____ commercial</p> <p>_____ agricultural</p> <p>_____ industrial</p> <p>_____ multi-family of 5+ units</p> <p>The improvements sought are for:</p> <p>_____ existing building</p> <p>_____ new construction</p>	<p>ASSESSOR / TREASURER OFFICIAL RECORDS APPRAISAL ZONING REPORT GROUND LEASE (if applicable)</p>	

<p>QUALIFYING OWNER</p>	<p>Is property owned by a <input type="checkbox"/> limited liability company <input type="checkbox"/> general or limited partnership corporation <input type="checkbox"/> individual/Sole proprietorship <input type="checkbox"/> trust</p>	<p>If property is held by a limited liability company, general or limited partnership or a corporation, the applicant should include a copy of the certificate of formation, organization, incorporation or similar document and a good standing certificate/certificate of existence from the state or organization and, if not organized in Tennessee, a certificate of registration to conduct business in Tennessee as a foreign entity.</p> <p>If a trust, a copy of the trust agreement or a trustees' certificate.</p> <p>If an individual, a copy of a valid driver's license.</p> <p>If the application is to be signed by a party other than the applicant, then, in addition to the foregoing, a power of attorney or corporate resolution authorizing said party.</p>	

<p>CAPITAL PROVIDER</p>	<p>Legal Name: Name of contact person: Phone number: Email address:</p>		
<p>QUALIFYING IMPROVEMENT CERTIFICATION (Existing Building)</p>	<p>The improvement sought are (check all that apply): <input type="checkbox"/> Energy efficient <input type="checkbox"/> Water efficient <input type="checkbox"/> Renewable Energy <input type="checkbox"/> Lead Reduction, water</p> <p>If Resiliency, specify type: <input type="checkbox"/> flood mitigation <input type="checkbox"/> stormwater management <input type="checkbox"/> other (please specify in an attachment)</p> <p>Attach description of improvements and certifications for improvements sought, including documentation of the appropriate license/qualifications required by the Guidebook.</p>	<p>Original and copy of: Energy, Water & Resilience Compliance Certificate that is complete, signed, with accompanying documentation. MLGW Compliance Certificate, if applicable.</p>	

<p>QUALIFYING IMPROVEMENT CERTIFICATION (New Construction)</p>	<p>The improvement sought are (check all that apply): <input type="checkbox"/> Energy efficient <input type="checkbox"/> Water efficient <input type="checkbox"/> Renewable Energy</p> <p>If Resiliency, specify type: <input type="checkbox"/> flood mitigation <input type="checkbox"/> stormwater management <input type="checkbox"/> other (please specify in an attachment)</p> <p>Attach description of improvements and certifications for improvements sought, including documentation of the appropriate license/qualifications required by the Guidebook.</p>	<p>Original and copy of: Energy, Water & Resilience Compliance Certificate that is complete, signed, with accompanying documentation required by the Certificate. MLGW Compliance Certificate, if applicable.</p>	
<p>ECONOMIC BENEFIT CERTIFICATION</p>	<p>The economic benefits of the proposed Qualified Improvements exceed the costs of the proposed assessment.</p>	<p>Original and copy of: Economic Benefits Compliance Certificate that is complete and signed.</p>	
<p>LIENHOLDER CONSENT</p>	<p>CONSENT(s) <input type="checkbox"/> attached <input type="checkbox"/> delivered at close</p>	<p>Applicant should submit the Lienholder Consent Form (must be substantially the same as the Model form)</p> <ul style="list-style-type: none"> • The form must be signed and notarized in appropriate places 	

		Cross-check list of Lienholders from Title Report with Written Consents provided by Capital Provider.	
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IF CONSENT WILL BE EXECUTED AT CLOSING, CONDITIONAL APPROVAL IS GIVEN.
IF CONSENTS ARE DELIVERED AT CLOSING, APPLICANT MUST HOLD COUNTY-EXECUTED CLOSING DOCUMENTS IN ESCROW UNTIL CONSENTS ARE OBTAINED. AT DISCRETION OF THIS OFFICE, THIS APPLICATION MAY BE AMENDED AND RETURNED WITH COPIES OF CONSENTS ATTACHED.

BY SIGNATURE BELOW, THE APPLICANTS (THE 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 HAVE READ THE DISCLOSURES AND DISCLAIMERS ATTACHED TO THIS APPLICATION AND UNDERSTAND THE RISKS OF PARTICIPATING IN THE C-PACER PROGRAM; FURTHER, THAT 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 BEHALF OF PROPERTY OWNER: _____
NAME & TITLE: _____

ON BEHALF OF CAPITAL PROVIDER: _____
NAME AND TITLE: _____

TO BE COMPLETED BY AUTHORIZED ADMINISTRATOR OFFICIAL

APPLICATION: _____ APPROVED _____ CONDITIONALLY APPROVED _____ DENIED _____

ON BEHALF OF ADMINISTRATOR: _____
NAME AND TITLE: _____

Draft
June 24, 2022

DISCLOSURES & DISCLAIMERS

Draft
June 10, 2022

Assessment Agreement for C-PACER Financing

CITY OF MEMPHIS, TENNESSEE
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY
(C-PACER) PROGRAM

TABLE OF CONTENTS

		Page
SECTION 1.	PURPOSE	2
SECTION 2.	THE PROPERTY	2
SECTION 3.	ASSESSMENT AND LIEN	2
SECTION 4.	COLLECTION OF ASSESSMENT; TAX SALE	3
SECTION 5.	TERM; AGREEMENT RUNS WITH THE LAND;	3
SECTION 6.	ASSESSMENT BILLING, COLLECTION AND DISBURSEMENT TO CAPITAL PROVIDER	3
SECTION 7.	RECORDATION OF DOCUMENTS	4
SECTION 8.	AMENDMENT	4
SECTION 9.	BINDING EFFECT; ASSIGNMENT	4
SECTION 10.	NO LIABILITY OF THE CITY OR PROGRAM ADMINISTRATOR	4
SECTION 11.	INDEMNIFICATION	4
SECTION 12.	GOVERNING LAW; VENUE	5
SECTION 13.	SEVERABILITY	5
SECTION 14.	COUNTERPARTS	5
EXHIBIT A	PROPERTY LEGAL DESCRIPTION	A-1
EXHIBIT B	DESCRIPTION OF QUALIFIED IMPROVEMETS	B-1
EXHIBIT C	FORM OF NOTICE OF ASSESSMENT	C-1
EXHIBIT D	ASSESSMENT SCHEDULE	D-1

Assessment Agreement for C-PACER Financing

City of Memphis, 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 City of Memphis, Tennessee (the "**City**"), by and through the City Treasurer (the "**Treasurer**"), the Economic Development Growth Engine Industrial Development Board of the City of Memphis and the County of Shelby, Tennessee ("**Edge**" or the "**Administrator**"), [CAPITAL PROVIDER], a [STATE] [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, the City has, on _____ established the Commercial Property Assessed Clean Energy and Resiliency Program (the "**Program**") through the adoption of Ordinance No. _____ ("**City 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 Tenn. Code Ann. §§ 68-205-101 et seq. (as may be amended from time to time, the "**C-PACER Act**"); and

WHEREAS, in the City Ordinance, the City designated the Administrator as the Program Administrator as such term is defined in the City Ordinance; and

WHEREAS, the purpose and method of approval of C-PACER financing under the Program are described in the Program Guidebook 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 Guidebook**"); and

WHEREAS, the Property is located in the boundaries of the City and the City 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 City through the Program Administrator, has reviewed such application materials to assess compliance with the C-PACER Act, the City Ordinance, and Program Guidebook and 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 the Capital Provider and under which the Property Owner agrees to repay such Capital Provider; and

WHEREAS, pursuant to the C-Pacer Act, the City 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 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 City enter into this Agreement; 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, the Capital Provider and the City 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 the City 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 City 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 an assessment levied against the Property by the City 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 Program Administrator, on behalf of the City, will execute and cause to be recorded in the office of the Register of Deeds for Shelby 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 the City (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 City 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 subject to a tax sale in the manner specified in Section 4, below.

(e) The Property Owner hereby certifies to the City 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 fair market value of the property prior to the completion of all planned real property improvements, including any existing indebtedness on the property as determined by a qualified appraiser in the report, 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 fair market value of the property at the time of the completion of all planned real property improvements, 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 Ordinance.

(b) The City 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, including penalty interest if delinquent, to the Capital Provider, its successors or assigns. The Parties hereby acknowledge and agree that an overdue Assessment Installment will be collected by the City in the same manner that the collection of delinquent real property taxes, irrespective of whether real property taxes (or any other taxes, charges, or assessments) are due and owing at the time.

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 City 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 a 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.

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

(a) In General. The City agrees to collect the Assessment Installments pursuant to Section 4 hereof and forward payments received to the Administrator, its successors, or

its permitted assignees, for further payment to the Capital Provider, no later than [30 days] after receipt of the amounts. The Administrator agrees to forward all such payments to the Capital Provider promptly and, in any event, within [seven (7) days] of the Administrator's receipt. In the event the Administrator ceases to act as the Program Administrator and there is no successor Program Administrator, the City hereby agrees to forward the payments to the Capital Provider within [30 days] after receipt of said payments.

(b) Delinquencies. Funds collected by the City pursuant to Section 4(b) for the payment of the overdue Assessment Installment from a tax sale with respect to the Property, including any penalties and interest and the costs and fees incident to the collection thereof, shall be paid to the City, its successors, or its permitted assignees no later than [thirty (30)] days after receipt of the amounts, provided that any sale proceeds in excess of the amount of the overdue Assessment Installment will be distributed by the City in accordance with applicable law. The City agrees to forward all such payments, less its costs of performing the tax sale that the City is permitted to retain in accordance with the C-PACER Act to the Administrator within thirty (30) days. The City agrees to forward all such payments to the Capital Provider promptly and, in any event, within [seven (7) days] of the City's receipt.

Section 7. Recordation of Documents. The City shall cause the Program Administrator to record, or the Program Administrator may delegate to the Capital Provider to record, in the office of the Shelby County Register of Deeds the Notice of Assessment, 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 the City, or any successor or assign of the City, the Capital Provider, or any successor or assign 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 9. Binding Effect; Assignment. This Agreement inures to the benefit of and is binding upon the City, Administrator, Capital Provider, the Property Owner and their respective successors and assigns; provided, however, that neither the City nor the Administrator may assign their rights and obligations under this Agreement without the prior written consent of the Capital Provider. 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 the City, the Property Owner or the Administrator, provided the Capital Provider provides notice of the assignment to the City, the Property Owner, and the Administrator.

Section 10. No Liability of the City or Program Administrator. Pursuant to the C-Pacer Act, so long as the City and Program Administrator comply in good faith with the C-Pacer Act, the Ordinance, and the City's obligation to bill, collect and enforce the Assessment under this Agreement, neither the City nor the Program Administrator shall incur 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 City or Program Administrator be personally liable for exercising any rights or responsibilities pursuant to or in furtherance

of this Agreement. This provision shall inure only to the City, its governing body, employees, board members, and executives, and the Program Administrator, its governing body, employees, board members, and executives, and not to the benefit of the City's successors or assigns of this Agreement.

Section 11. **Indemnification.** Property Owner agrees to defend, indemnify and hold the City, its Council members, employees, agents, and contractors, and the Program Administrator, its Board of Directors, employees, agents, and contractors ("City Indemnified Parties") 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 City Indemnified Parties shall not apply to liability for damages to the extent caused by or resulting from the sole or gross negligence or willful misconduct of the City Indemnified Parties. 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 the State of Tennessee located in Shelby 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. **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

Draft
June 10, 2022

IN WITNESS WHEREOF, the City, Administrator, Capital Provider, 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.

ATTEST:

CITY OF MEMPHIS, TENNESSEE

City Comptroller

By: _____
Jim Strickland, Mayor

APPROVED AS TO FORM:

City Attorney

**ECONOMIC DEVELOPMENT GROWTH
ENGINE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF MEMPHIS AND
THE COUNTY OF SHELBY, TENNESSEE**

By: _____
Its: _____

CAPITAL PROVIDER:

By: _____
Its: _____

PROPERTY OWNER:

By: _____
Its: _____

CITY’S ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a notary public within and for said state and county, at Memphis, Tennessee, duly commissioned and qualified, personally appeared JIM STRICKLAND, with whom I am personally acquainted, and who upon oath acknowledged himself to be the Mayor of the City of Memphis and that he as such mayor being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the city of Memphis by himself as mayor.

WITNESS my hand and seal of office at Memphis, Tennessee, this the _____ day of _____, 20____.

Notary Public

My commission expires _____

[SEAL]

ADMINISTRATOR’S ACKNOWLEDGMENT

STATE OF TENNESSEE)
COUNTY OF SHELBY)

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 / non-profit entity], 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 / non-profit entity], 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: _____

PROPERTY OWNER'S ACKNOWLEDGEMENT

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 / non-profit entity], 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: _____

Draft
June 10, 2022

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 Shelby County, Tennessee.

Draft
June 10, 2022

EXHIBIT B
QUALIFIED IMPROVEMENTS

[To be inserted]

Draft
June 10, 2022

EXHIBIT C
FORM OF NOTICE OF ASSESSMENT

[To be inserted]

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 A** 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

Draft
June 10, 2022

Exhibit A

C-PACER Application

[See Attached]

**CITY OF MEMPHIS C-PACER PROGRAM
CERTIFICATE OF COMPLIANCE
Economic Benefits**

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 City of Memphis Commercial C-PACER Program:

I CERTIFY: The economic benefits of the proposed Qualified Improvements exceed the costs of the proposed assessment.

Signature: _____

NAME:

TITLE:

**CITY OF MEMPHIS 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 City of Memphis Commercial C-PACER Program:

1. I am either a licensed Professional Engineer or an authorized representative of a licensed engineering firm, whose registration number and stamp are shown below, and

If applicable, I am accredited by or belong to a firm with an accreditation from (please denote with a "X" and checkmark):

- Building Energy Assessment Professional (BEAP);
- Building Energy Modeling Professional (BEMP);
- Certified Building Energy Assessment Professional (BEAP) (offered by ASHRAE);
- Certified Energy Auditor (CEA) (offered by Association of Energy Engineers [AEE]);
- Certified Energy Manager (CEM) (offered by AEE);
- Certified FORTIFIED Commercial™ Evaluator (offered by IBHS);
- Certified GeoExchange Designer (CGD);
- Certified High-Performance Building Design Professional (HBDP) (offered by ASHRAE);
- Certified Measurement and Verification Professional (CMVP) (offered by AEE and EfficiencyValuation Organization);
- Investor Confidence Project (ICP) Quality Assurance Assessor;
- Investor Confidence Project (ICP) Project Developer;
- LEED Accredited Professional;
- Licensed Architect;
- Water Quality Association Professional Certification;
- North American Board of Certified Energy Practitioners (NABCEP) (for solar PV only, a design specialist certification is acceptable).

Please provide verification of professional accreditation and recognition

2. The application is for:
 - an existing building
 - new construction
3. 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 OR an ASHRAE Level 2 full building model): Please Describe:

**CITY OF MEMPHIS C-PACER PROGRAM
CERTIFICATE OF COMPLIANCE
Energy, Water, Renewable Energy, Resilience**

6. The project proposal includes the “Qualified Improvements”, as defined in Tenn. Code Ann. § 68-205-102 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 either the 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 proposed Qualified Improvements will result in the reduction of lead in potable water.
- _____ The Qualified Improvements will result in improved resilience, which may include, without limitation, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids. If other, specify: _____

IF FOR NEW CONSTRUCTION (check those that apply):

I CERTIFY:

- _____ Each proposed Qualified Improvement or the building as a whole will enable the subject property to exceed the energy efficiency, water efficiency, renewable energy, renewable water, or resilience requirements of the current building code of the county.

Signature: _____

Print: _____

Date: _____

**CITY OF MEMPHIS C-PACER PROGRAM
CERTIFICATE OF COMPLIANCE
Energy, Water, Renewable Energy, Resilience**

NAME:

Business name:

Business address:

Business contact email:

Business contact phone:

IF APPLICABLE

License No. _____

Stamp: _____

ATTACHMENTS (Please attach to Certification)

Draft
June 28, 2022

MLGW COMPLIANCE CERTIFICATE

Property Owner: _____

Property Address: _____

The undersigned certifies that the Qualified Improvement involving power generation has received approval from the Memphis, Light, Gas and Water Division ("MLGW") for interconnection with MLGW's system, and the owner has entered into all applicable interconnection agreements with MLGW related to the Qualified Improvement.

PROPERTY OWNER:

[INSERT ENTITY NAME, IF APPLICABLE]

BY: _____
Signature

Printed Name

Title

MEMPHIS LIGHT, GAS AND WATER
DIVISION

BY: _____
Signature

Printed Name

Title

Date of application approval: _____

Date of executed interconnection agreement: _____

MORTGAGE HOLDER CONSENT

Date: _____

Mortgage Holder:

BANK NAME
BANK ADDRESS
BANK CITY, STATE, ZIP
PHONE NUMBER

Loan Number(s): (_____)

Property Owner and Mailing Address:

OWNER NAME
OWNER ADDRESS
OWNER CITY, STATE, ZIP

Property (as more particularly described in the attached Exhibit A):

PROPERTY ADDRESS
PROPERTY CITY, STATE, ZIP

Recording Information: [Date] and [Book] and [Page] or [Document No.]

This is a Mortgage Holder Consent (this "Consent") by the undersigned entity (the "Mortgage Holder") with respect to the above-referenced loan(s) (the "Loan") secured by the Property.

The Property Owner intends to finance the installation of eligible improvements in an amount of up to \$[INSERT MAX TFA]* ("Financing") in order to reduce energy consumption, to reduce water consumption, to increase resiliency, or to install renewable energy systems on the Property by participating in the commercial property assessed clean energy ("C-PACE") program ("Program") authorized by the City in which the Property is located. Pursuant to the Program, the Property Owner agrees to the levying of an assessment ("Lien") against the Property that will be collected in installments in the same manner as and subject to the same penalties, remedies, and lien priorities as real property taxes. In no circumstances will the amount owing on the assessment be accelerated on account of a payment default or for any other reason, but rather any proceeding to enforce the Lien shall be limited to the collection of the amount then currently due with respect to the assessment, including past-due interest, past-due fees, and costs of collection as permitted under the property assessed clean energy act, state tax code, and contracts with local government governing the Program.

By signing below, Mortgage Holder hereby: (i) acknowledges receipt of timely prior notice of the Financing and Lien, (ii) consents to the Lien in the amount of the Financing; (iii) agrees that the Financing and the Lien will not constitute an event of default or trigger the exercise of any remedies under the loan documents between Mortgage Holder and Property Owner, and (iv) acknowledges that this Consent is being relied on by all parties participating in, lending in or administering the Program.

* Includes cost of issuance and capitalized interest. PACE may provide financing for up to 110% of the Financing.

Draft
June 10, 2022

Exhibit A
(Legal Description)

Draft
June 10, 2022

INSTRUMENT PREPARED BY AND
WHEN RECORDED, RETURN TO:

NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN
Tennessee Code Annotated 68-205-109 Filed in Shelby County

(GRANTEE) CITY OF MEMPHIS

(GRANTOR) [PROPERTY OWNER]

Notice is hereby given that the City, at the request of the property owner named below, is placing a C-PACER Lien pursuant to Tennessee Code Annotated 68-205-109. In support of this lien the following information is submitted:

1. THE ASSESSMENT LIEN GRANTEE	CITY OF MEMPHIS
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(S) 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 A TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
6. ASSESSOR'S PARCEL NUMBER OF THE PROPERTY	[INSERT]
7. PRINCIPAL AMOUNT OF ASSESSMENT SECURED BY C-PACER LIEN	[INSERT]

Draft
June 10, 2022

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)	SEE EXHIBIT A HERETO

Draft
June 10, 2022

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:

City of Memphis, Tennessee

By: _____
Its: _____

GRANTOR:

[PROPERTY OWNER]

By: _____
Its: _____

STATE OF TENNESSEE
COUNTY OF XXXX

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 bargainer, 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 Development Corporation Expires:

[seal]

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
ASSESSMENT AGREEMENT

[see attached]