

EXHIBIT A

CITY OF ALEXANDRIA COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the “Agreement”) is made and entered into as of the date it is fully executed (the “Effective Date”) by and between the CITY OF ALEXANDRIA, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the “City”) _____ (the “Borrower”) and _____ (the “Capital Provider”), and their respective successors and assigns (collectively, the “parties”).

RECITALS

WHEREAS, Virginia’s “financing clean energy, resiliency, and stormwater management programs” law, § 15.2-958.3 of the Code of Virginia of 1950, as amended (the “Act”) authorizes Virginia localities to adopt a Commercial Property Assessed Clean Energy Program. In conformance with the Act, the City of Alexandria has (i) enacted Title 7, Chapter 7 of the Alexandria City Code (the “Ordinance”) to create the City of Alexandria Commercial Property Assessed Clean Energy (“C-PACE”) Financing Program (the “Program”), the requirements of which are set forth in the Ordinance and the Program guidelines (such guidelines, as established and amended from time to time pursuant to the procedure set forth in the Ordinance, the Program Guide”), and (ii) selected an administrator to facilitate the Program (“Administrator”);

WHEREAS, the City’s C-PACE Program facilitates C-PACE Loans provided by Capital Providers for renewable energy production and distribution facilities, energy usage efficiency systems, water usage efficiency, resiliency and stormwater management systems, and other similar improvements as authorized by the Act and the Program;

WHEREAS, each C-PACE Loan is secured by a voluntary special assessment lien (the “C-PACE Lien”) authorized and given voluntarily by the Borrower to the City to ensure repayment of the C-PACE Loan; and

WHEREAS, pursuant to Chapter (?) of the Alexandria City Code (the “Ordinance”) and pursuant to the Act, the City, Borrower, and Capital Provider are required to enter into a written agreement specifying the terms and conditions for participating in the City’s C-PACE Program.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Act and Ordinance, the parties agree as follows:

Section 1 – Definitions.

Unless otherwise defined here, capitalized terms in this Agreement shall have the same meanings as set forth in the Ordinance.

Section 2 – Representations.

(a) Borrower is the legal and record owner of the Eligible Property more particularly described in Exhibit A (the “Property”).

(b) Borrower applied to participate in the City’s C-PACE Program and desires to obtain a C-PACE Loan to install certain Eligible Improvements (“Project” or “Project Improvements”) on the Property.

(c) Borrower has or will enter into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. A summary of the terms of the C-PACE Loan, including an Assessment Payment Schedule, are set forth in Exhibit B (“Loan Terms”). Borrower and Capital Provider acknowledge and agree that the Financing Agreement may include only those costs and fees for which a C-PACE Lien may be imposed under the Act and Ordinance. [The Capital Provider shall provide the written summary on letterhead.]

(d) The City hereby assigns the C-PACE Lien to the Capital Provider and the Capital Provider hereby assumes the responsibility to enforce the C-PACE Lien in accordance with the terms of the Loan Documents, the Act, the Ordinance, and all other applicable laws. The parties acknowledge and agree that should Borrower default on the C-PACE Loan, the Capital Provider will enforce the C-PACE Lien according to the Loan Documents, the Act, and Ordinance. [In the alternative, the City may choose to enforce the C-PACE Lien for the benefit of the Capital Provider according to the Loan Documents, the Act, and the Ordinance.]

(e) Borrower and Capital Provider confirm that they have obtained Subordination Agreements for each deed of trust or mortgage lien against the Property.

Section 3 – Program Terms and Conditions.

The parties agree as follows:

(a) C-PACE Loan. Capital Provider will provide financing for the Project in accordance with the C-PACE Loan Documents. The Loan Terms are summarized in Exhibit B.

(b) Program Fee(s). Borrower agrees to pay Program Fee(s) in the amount of \$ _____ as follows: _____.

(c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to Borrower under the Program, Borrower hereby requests and authorizes the City to levy a C-PACE Lien against the Property in the Loan Amount set forth in the Loan Terms (Exhibit B). After the execution of this Agreement, the Capital Provider, acting on behalf of the City pursuant to the Ordinance, will Record the C-PACE Lien against the Property in the land records of the Circuit Court of the City of Alexandria, Virginia. Promptly thereafter, the Capital Provider, acting on behalf of the City pursuant to the Ordinance, shall assign solely the City's right, title and interest in and to the C-PACE Lien to the Capital Provider by Recording an Assignment of Special Assessment Lien, substantially in the form attached hereto as Exhibit D. Such assignment shall include only the City's right, title and interest in and to the Loan Payments and the C-PACE Lien, and the City shall retain all of its other rights and remedies, including any special powers of enforcement or collection to which the City, by virtue of its status as a political subdivision of the Commonwealth, is entitled or empowered to exercise under applicable laws of the Commonwealth. Upon such assignment, the Capital Provider shall be responsible, subject to and in

accordance with the terms of this Agreement, for all billing, collection, enforcement and administrative duties in respect of each of the C-PACE Loan, the Loan Payments and the C-PACE Lien. BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT IT SHALL MAKE ALL PAYMENTS DUE IN RESPECT OF EACH OF THE C-PACE LOAN, THE LOAN PAYMENTS AND THE C-PACE LIEN TO THE CAPITAL PROVIDER, AND NOT TO THE CITY OR ADMINSTRATOR. The C-PACE Lien may, in the Capital Provider's sole discretion, but subject to the terms of this Agreement, be amended after the Capital Provider disburses the Loan. To effect such amendment, the Capital Provider, acting on behalf of the City pursuant to the Ordinance, will Record a Confirmation and Amendment of Special Assessment Lien, substantially in the form attached hereto as Exhibit B, which shall include the final repayment schedule.

(d) Loan Payments. The C-PACE Loan is due and payable to the Capital Provider [or City for the benefit of the Capital Provider] as set forth in the Loan Terms (Exhibit B) and remitted as follows:

[Program Fee(s) shall be deducted from Loan proceeds at funding or from Loan Payments in accordance with the Loan Documents and Program Guide.] Upon notice from the Program Administrator or Capital Provider that all amounts owing have been paid in full, the City will execute a release of the C-PACE Lien in the form attached hereto as Exhibit C [to be provided by the Capital Provider and approved by the City]. Thereafter, the Program Administrator or Capital Provider will record the release.

(e) Maintenance of Assessment. The City agrees to maintain and to continue the C-PACE Lien on the Property for the benefit of Capital Provider until the C-PACE Loan, including all interest, fees, penalties, costs, and other sums due, is paid in full.

(f) Assignment. Capital Provider shall have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider, provided all the following conditions are met:

(1) The assignment or transfer is made pursuant to the requirements of the Ordinance and Program Guide;

(2) The Program Administrator and Borrower are notified in writing of the assignment or transfer and provided the address where future Loan Payments should be mailed at least thirty (30) days before the next Payment is due according to the Assessment Payment Schedule; and

(3) The assignee or transferee, by operation of the Assignment or otherwise, assumes Capital Provider's obligations under the Loan Documents. Upon written notice to the Program Administrator and Borrower of an assignment or transfer of the right to receive the Loan Payments that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under the Loan Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C-PACE Lien that does not meet all these conditions is void.

(g) Lien Priority and Enforcement. Pursuant to the Act, Ordinance, and Program Guide:

(1) Delinquent Installments of the C-PACE Loan will incur interest and penalties as set forth in the Loan Documents.

(2) The C-PACE Lien, together with any penalties and interest thereon:

(i) has the same priority status as a lien for real estate taxes in the City of Alexandria, Virginia;

(ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the land records of the Circuit Court of the City of Alexandria, Virginia, until the financing secured by the C-PACE Lien and any penalties and interest are paid in full; and

(iii) shall run with the land, and any portion of the C-PACE Lien that has not yet become due under the Loan Documents is not eliminated by foreclosure of (i) a City property tax lien or (ii) the lien for any past due portion of the C-PACE Loan.

(3) In a suit to collect Delinquent Payments, the Capital Provider will be entitled to recover the Delinquent Payments, penalties, and interest due, and the costs and expenses of collection, including attorney's fees, all as set forth in the Loan Documents.

(4) In the event of a sale or transfer of the Property by Borrower, the obligation for the C-PACE Lien and Borrower's obligations under the Loan Documents will be transferred to the succeeding owner.

(h) Borrower's Waiver of Certain Defenses; Confession of Judgment: By executing this Agreement, Borrower acknowledges and agrees as follows:

(1) After the C-PACE Lien Certificate is recorded, Borrower waives the right to contest the Lien on the basis that the Project Improvements are not Eligible Improvements as such terms are defined herein and in the Ordinance;

(2) Borrower waives all defenses, affirmative or otherwise, to a foreclosure action brought as a result of Borrower's default for failing to pay the Loan Payments due pursuant to the Loan Documents;

(3) To the extent permitted by the Financing Agreement, Borrower waives all defenses to the imposition of personal liability for corporate officers as permitted under section 58.1-3965(F) of the Code of Virginia; and

(4) Borrower shall provide a confession of judgment if requested by the Capital Provider.

(i) Written Contract Required by the Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by §15.2-958.3(A)(7) of the Act.

(j) Transfer of Project Improvements. Borrower agrees that all Project Improvements purchased, constructed, and/or installed through financing obtained pursuant to the C-PACE Program shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property.

(k) No Cost to City. No provision of this Agreement requires the City to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(l) Term of the Agreement. The term of this Agreement shall commence upon the Effective Date and shall be in full force and effect until the C-PACE Loan has been paid in full.

(m) Remedies. Upon the occurrence of an Event of Default, the Capital Provider may in addition to any other remedies which it may have, at its option and without prior demand or notice, take any or all of the following actions in any order selected by the Capital Provider:

(1) Immediately terminate any pending disbursement of the C-PACE Loan (and the Capital Provider shall have no further obligation to make such Loan);

(2) Declare immediately due and payable all or any portion of (i) the unpaid Loan Payments (less any interest portion not yet accrued) and (ii) any other accrued and unpaid fees, costs or expenses under the Loan Documents;

(3) Exercise any remedies available to the Capital Provider under the Loan Documents;

(4) Exercise any other rights and remedies available to the Capital Provider or at law or in equity.

The enumeration of the rights and remedies of the Capital Provider set forth in this Agreement is not intended to be exhaustive, and the exercise by the Capital Provider of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given under the Loan Documents or that may now or hereafter exist in law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Capital Provider in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude other or further exercise thereof or the exercise of any other right, power or privilege or be construed to be a waiver of any Event of Default. No course of dealing between Borrower and the Capital Provider or their respective agents or employees shall be effective to change, modify or discharge any provision of any Loan Document or to constitute a waiver of any Event of Default.

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Borrower, or any right or remedy of the Capital Provider or City, Borrower agrees to indemnify, defend, and hold harmless the Capital Provider and City, their directors, officers, employees, agents, subsidiaries, and affiliates (each, an "Indemnified Party"), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether created by statute or common law, including all costs and expenses, including attorneys' fees, arising from or associated with this C-PACE Loan transaction. This section shall survive the expiration of the Term of this Agreement.

Section 5 - Miscellaneous Provisions.

(a) Construction and Definitions. This Agreement is to be construed in accordance with and with reference to the Act, Ordinance, and Program Guide. Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Ordinance.

(b) Further Assurances. Borrower further covenants and agrees to do, execute, and deliver, or to cause to be done, executed, and delivered, all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.

(c) Severability. If the C-PACE Act, the Ordinance, and/or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the City or Capital Provider, Borrower agrees to continue to make the Loan Payments required under the Loan Documents and agrees to execute any and all documentation to perfect and enforce the C-PACE Loan as required by the City or Capital Provider. The invalidity of any clause, provision, or section of this Agreement shall not affect any remaining clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(e) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the City:

City Manager
City of Alexandria
301 King Street, Suite 3100
Alexandria, VA 22314

With a copy to:

City Attorney
City of Alexandria
301 King Street
Alexandria, VA 22314

If to the Borrower:

[Address]

If to the Capital Provider:

[Address]

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the parties.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In any action, in equity or at law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the state courts in the City of Alexandria, Virginia.

(h) Successors and Assigns. This Agreement is binding upon and made for the benefit of Borrower, Capital Provider, and City and their respective successors and permitted assigns.

(i) The City. Each of Borrower and the Capital Provider acknowledges and agrees, for the benefit of the City and as a condition of participation in the Program, that: (i) the City undertakes no obligation under or in respect of any Loan Document or the Program Guide, and no implied covenants or obligations of the City shall be read into either, (ii) regardless of any default by Borrower, the City has no obligation to make Loan Payments to the Capital Provider, or any other payments in respect of the C-PACE Loan, including, without limitation, any fees, expenses and other charges described in any Loan Document, (iii) none of any C-PACE Loan, Loan Payment, C-PACE Lien or other obligation arising from any Loan Document, the Act or the Ordinance shall be backed by (A) any credit of the City, (B) any credit of the Commonwealth or its political subdivisions, including, without limitation, the City, or (C) any taxes or governmental funds, (iv) none of any C-PACE Loan, Loan Payment, C-PACE Lien or other obligation arising from any Loan Document, the Act or the Ordinance shall constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, (v) the City has not made any representations, financial or otherwise, in respect of Borrower, the Property or the Project, (vi) the City makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of the C-PACE Lien, or any assignment or amendment thereof, (vii) the City assumes no responsibility or liability in respect of the Project, or the planning, construction or operation thereof, (viii) each of Borrower and the Capital Provider shall, upon request, provide the City with any information related to the Project or the Loan that is reasonably necessary to confirm that the Project or Loan meets all requirements of the Act, the Ordinance and the Program Guide, (ix) each of Borrower and the Capital Provider shall comply with all applicable requirements of the Act, the Ordinance and the Program Guide, and (x) the Capital Provider shall reimburse the City, within ten (10) days upon written demand, for any reasonable out-of-pocket expenses incurred by the City in connection with any Loan Document, including, without limitation, the preparation and Recording of the Lien or any assignment or amendment thereof.

(j) Entire Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(k) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

IN WITNESS WHEREOF, the City, Borrower, and Capital Provider have each caused this Agreement to be executed on the date(s) entered below:

CITY OF ALEXANDRIA, VIRGINIA

By: _____

Name/Title: _____

Date: _____

ATTEST:

City Clerk

Approved as to form and correctness:

Deputy City Attorney

BORROWER

By: _____

Name/Title: _____

Date: _____

CAPITAL PROVIDER

By: _____

Name/Title: _____

Date: _____

Exhibit A
Property Description

Exhibit B
Loan Terms and Assessment Payment Schedule

Exhibit C
Form of C-PACE Lien Release

Exhibit D
Form of C-PACE Assignment of Special Assessment Lien