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**REPORT REQUIRED BY ALASKA STATUTES 29.55  
FOR PROPOSED MATANUSKA-SUSITNA BOROUGH  
PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

**Introduction**

This report (“**Report**”) is adopted by the Matanuska-Susitna Borough (“Local Government”) for its Property Assessed Clean Energy (PACE) Program (**the “Program”**) in accordance with the requirements of the Municipal Property Assessed Clean Energy Act, Alaska Statutes 29.55 et seq. as amended (**the “PACE Act”**).

Local Government and its constituents benefit when older existing buildings are modified with new technology and equipment that increases energy efficiency. As described in this Report, Local Government is establishing the Program as a means to provide private sector investment in energy efficiency. The Program will be offered to property owners on a strictly voluntary basis with financing provided by private capital providers and not from public funds or resources.

Authorized under the PACE Act enacted in 2017, the Program is an innovative financing program that enables owners of privately owned commercial and industrial properties to obtain low-cost, long-term financing for energy efficiency improvements, and renewable energy retrofits. PACE financing is intended to cover the full costs of eligible improvements, with little or no up-front out-of-pocket cost to the owner, and repayment made through assessments payments on the property.

Generally, as with other special assessments in Alaska, the assessment under a PACE program is secured by a lien on the property and paid back over time. Like other special assessments, PACE is non-accelerating, meaning current or past due annual assessment payments will be collected each year while future assessment payments stay with the property. The PACE repayment obligation transfers automatically to the next owner if the property is transferred or conveyed or may be voluntarily prepaid. This arrangement allows property owners to spread the cost of energy improvements – such as energy-efficient boilers, upgraded insulation, new windows, or solar installations – over the full expected life of the measure.

Assessments are a tool which local governments in Alaska levy on real property to finance public improvement projects including water and sewer systems. PACE builds on a long history of using such assessments. As such, Local Government finds that Qualified Improvements, as defined herein, financed through PACE serve a valid public purpose. These Qualified Improvement may:

- Enable property owners and occupants to save amounts in utility and maintenance costs;
- Reduce demand on the electricity grid;
- Mitigate greenhouse gas emissions associated with energy generation;
- Enhance the value and efficiency of existing buildings;
- Boost the local economy by creating new job opportunities for laborers and new business opportunities for contractors, engineers, commercial lenders, professionals, and equipment vendors and manufacturers;
- Increase business retention and expansion in the PACE region by enabling cost effective energy saving updates to existing property; and
- Improve the health and safety and productivity of building occupants; and
- Improve productivity through optimized energy usage.

Reasonable administrative fees (“**Program Administration Fee**”) may be charged, pursuant to the PACE Act, by the Local Government to pay administrative costs of the Program. Additionally, the PACE Act authorizes Local Government to enter into a contract with a third party to provide certain professional services necessary to administer the Program (the “**Third Party Administrator**”). Local Government may delegate certain administration activities under the Program to a Third Party Administrator.

The PACE Act limits “**Eligible Properties**” to privately owned commercial and industrial properties located within the Local Government PACE region. Undeveloped property and property undergoing development at the time of the assessment are not deemed Eligible Properties under the PACE Act.

PACE financing may be used to pay for qualifying improvements to Eligible Properties. The PACE Act defines “**Qualified Improvements**” are those improvements that are fixed to existing privately owned commercial or industrial property and are intended to reduce energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature.

The following items may constitute Qualified Improvements:

- High efficiency heating, ventilating and air conditioning (“HVAC”) systems
- High efficiency chillers, boilers, and furnaces
- High efficiency water heating systems
- Energy management systems and controls
- High efficiency lighting system upgrades
- Building enclosure and envelope improvements
- Heat recovery and steam traps
- Solar photovoltaic systems

- Solar thermal systems
- Water conservation and wastewater recovery and reuse systems that save energy

For purposes of the PACE Act, a “**Capital Provider**” is a third-party provider of PACE financing. The PACE Act does not establish criteria for financial institutions or investors to serve as Capital Providers.

The Program will operate as an open market in which property owners have the flexibility to select their preferred Capital Provider for financing a Qualified Improvement located on an Eligible Property. The open market model gives property owners access to a range of private Capital Providers who offer competitive rates and financing terms and conditions. No exclusivity will be provided to Capital Providers, and the property owners will retain the right to choose the type and provider of financing that works best for their business needs.

Local Government does not, and will not (i) guarantee or imply that funding will automatically be provided from a Capital Provider, (ii) imply or create any approval, endorsement or certification of, or responsibility for, any Capital Providers; or (iii) create any type of express or implied favoritism for eligible Capital Providers.

### **Components of the Program**

As required under Section 29.55.110 of the PACE Act, the following describes Program requirements:

- a. Map of Region. A map of the boundaries of the region included in the Program is attached to this Report as Exhibit 1. The region encompasses the Local Government limits on an areawide basis.
- b. Form Contract with Owner. A form contract between Local Government and the record owner of the Eligible Property (the “**Owner Contract**”) is attached as Exhibit 2. It specifies the terms of the assessment under the Program and the property owner’s obligation to repay financing Capital Provider through assessments imposed and serviced by Local Government.
- c. Form Contract with Capital Provider. A form contract between Local Government and a Capital Provider chosen by a property owner (the “**Capital Provider Contract**”) is attached to this Report as Exhibit 3. It specifies the financing and servicing of the debt through assessments by Local Government.
- d. Qualified Improvements. Qualified Improvements under the Program must: (a) be fixed to existing privately owned commercial or industrial property; and (b) be intended to reduce energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature. The Program may not be used to finance

improvements to undeveloped lots or lots undergoing development at the time of the assessment.

e. Plans for Ensuring Sufficient Capital. Local Government intends to adopt an ordinance establishing and approving the Program, which is inclusive of this Report (“Ordinance”). The Ordinance allows Capital Providers to extend financing to property owners for Qualified Improvements. Financing documents executed between owners and Capital Providers will describe the terms of the financing. Local Government will enter into a written contract with a record owner of an Eligible Property to impose an assessment to secure the financing and to service assessments to repay the financing.

f. No Use of Bonds or Public Funds. Local Government does not intend to issue bonds or use any other public monies to finance Qualified Improvement projects under the Program. Property owners will obtain all financing from the Capital Providers they choose.

g. Limit on Length of Assessment. The total financing repaid by assessments may not exceed 20 years or the useful life of the Qualified Improvement project that is the basis for the assessment, whichever is shorter.

h. Application Process and Eligibility Requirements. Local Government or Third Party Administrator will accept applications from property owners and Capital Providers seeking to finance Qualified Improvements under the Program. Each application must include:

- i. A description of the specific Qualified Improvements to be installed or modified on the property;
- ii. The amount of the assessment;
- iii. A copy of a title report of the property dated within [60] days of application submission to evidence a) that the property owner requesting to participate in the Program is the legal record owner of the benefitted property; b) the legal description of the specific real property to which the Qualified Improvements will be permanently fixed; and c) any mortgages or liens encumbering the property;
- iv. A copy of the written consent of any holder of a mortgage lien on the property, as described in Section (k) below;
- v. Statement from the Capital Provider that all financial eligibility requirements of the owner as described in Section (i) have been satisfied; and
- vi. A copy of the energy review as described in Section l.i.

i. Financial Eligibility Requirements. A Capital Provider, chosen by the property owner will assume full responsibility for determining whether a property owner has

demonstrated their ability to repay the financial obligations of the PACE assessments through appropriate underwriting factors, including:

- i. That the property owner requesting to participate in the Program is the legal record owner of the benefitted property;
- ii. That the property owner is current on mortgage and property tax payments;
- iii. That that the property owner is not insolvent or in bankruptcy proceedings;
- iv. That the period of assessment does not exceed 20 years or the useful life of the Qualified Improvement that is the basis for the assessment, whichever is shorter;
- v. That the total financing repaid by assessments does not exceed 20 percent of the assessed value of the property at the time of program application. However, if the total financing repaid by assessments does not exceed 50 percent of the assessed value of the property at the time of program application, the property owner may apply for a waiver from Local Government or Third Party Administrator, as applicable, to exceed the limitation under this requirement. Such a waiver must include a reasonable justification acknowledged in writing by the property owner and capital provider and address the interests of potential tenants and future property owners; and
- vi. That the total financing repaid by assessment is exceeded by the projected monetary savings to the property owner over the life of the assessment as a result of the Qualified Improvement project.

j. Imposition and Collection of Assessments. Pursuant to an Owner Contract, a property owner will request that Local Government impose, and Local Government will agree to impose, an assessment on the Property, as set forth in a Notice of Contractual Assessment Lien which will be filed in the property records of the recording district of Palmer, Alaska. The Owner Contract and Capital Provider Contract will provide that Local Government will agree to place the relevant assessment payment amounts on the subject property's tax bill or a stand-alone bill, to collect such assessments payments, and to enforce any delinquent assessment payment against the property for the benefit of Capital Provider in the same manner as a property tax lien against real property may be enforced by a local government under AS 29.45.320 – 29.45.470.

k. Mortgage Lender Notice and Consent. Before a Local Government enters into an Owner Contract to impose an assessment to repay the financing of Qualified Improvements under AS 29.55.100, the property owner shall give each holder of a mortgage lien on such property at least thirty (30) days' written notice of the intention of the property owner to participate in a program under AS 29.55.100 and obtain a

written consent of assessment from each holder of a mortgage lien on such benefitted property.

l. Energy Review. The record owner of property on which an assessment is imposed shall obtain from an independent, third-party qualified energy auditor:

- i. A review of the energy or emissions baseline conditions and the projected reduction in energy costs, energy consumption or demand, and emissions affecting local air quality, as appropriate, for each proposed Qualified Improvement; and
- ii. For each completed Qualified Improvement, verification that such Qualified Improvement project was properly completed and is operating as intended.

m. Marketing and Education Services. Local Government, or Third-Party Administrator, as applicable, will provide marketing and education services for the Program. Local Government may subsequently enter into agreements or memorandums of understanding with one or more other local governments, non-profit organizations, or private entities that promote energy conservation and/or economic development to provide marketing and education services for the Program.

n. Quality Assurance and Antifraud Measures. Local Government, or Third-Party Administrator, as applicable, will institute quality assurance and antifraud measures for the Program. Local Government or Third-Party Administrator, as applicable, will review each PACE application and supporting documents for compliance with this Report. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed Qualified Improvements all satisfy the Program underwriting and technical standard requirements included in this Report. The verification requirement under Section l.ii will be collected by the Local Government or Third-Party Administrator, as applicable, upon the completion of approved Qualifying Improvements.

o. Insurance Requirements. As part of an application for PACE financing, the property owner will submit evidence of insurance against damage to the Qualified Improvement; insurance shall be required for the term of the assessment.

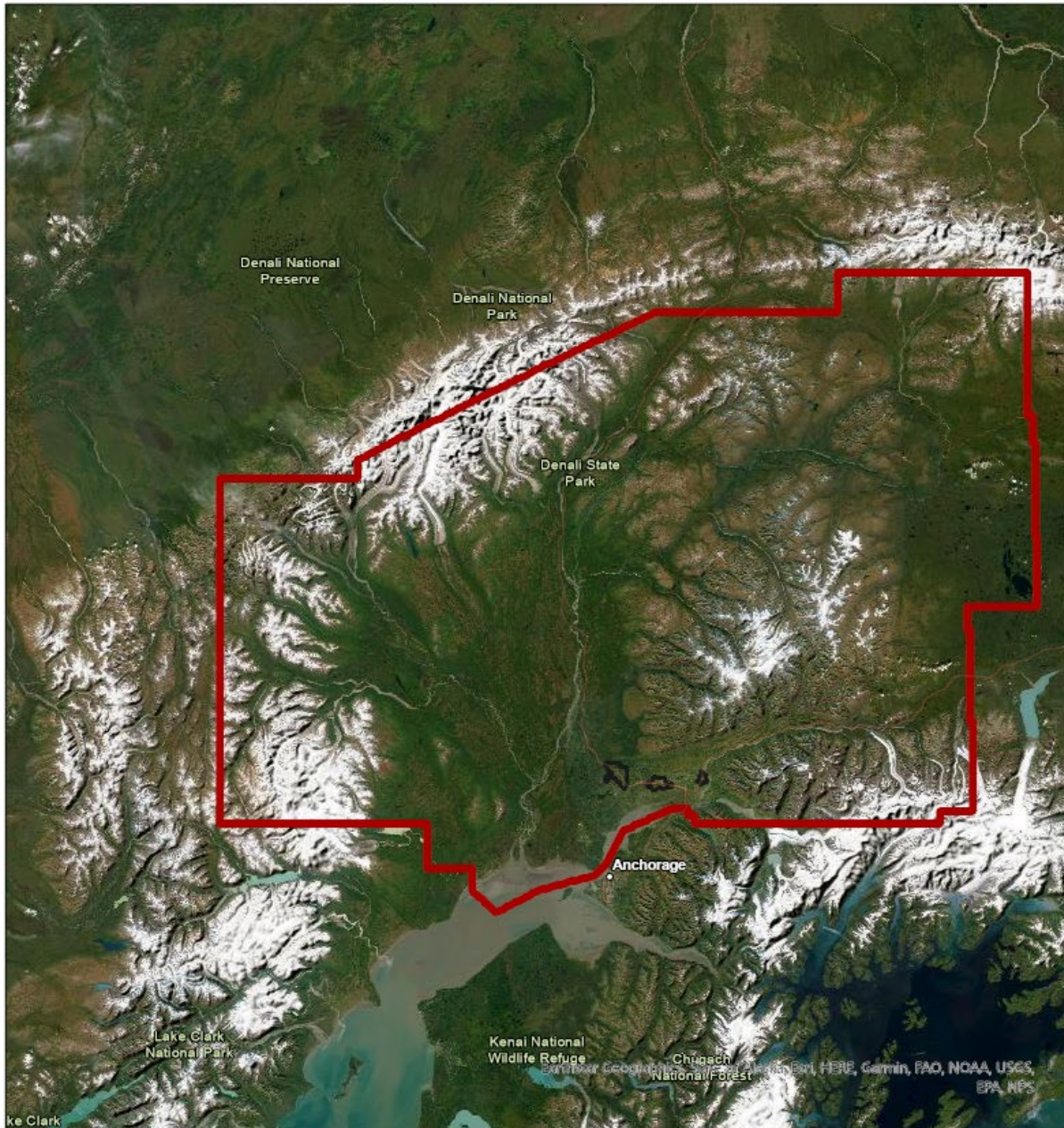
**EXHIBIT 1**  
**MAP OF PACE REGION**

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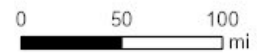


# Matanuska-Susitna Borough



Date: 11/19/2021

This map is solely for informational purposes only. The Borough makes no express or implied warranties with respect to the character, function, or capabilities of the map or the suitability of the map for any particular purpose beyond those originally intended by the Borough. For information regarding the full disclaimer and policies related to acceptable uses of this map, please contact the Matanuska-Susitna Borough GIS Division at 907-861-7858





**EXHIBIT 2**

**FORM CONTRACT WITH OWNER**

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## PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) OWNER CONTRACT (“Owner Contract”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Matanuska-Susitna Borough, Alaska (“Local Government”), and \_\_\_\_\_ (“Property Owner”).

### RECITALS

A. The Municipal Property Assessed Clean Energy Act, Alaska Statutes 29.55, as amended from time to time (the “PACE Act”), authorizes the governing body of a local government to establish an energy improvement assessment program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with record owners of existing privately owned commercial or industrial property to impose assessments on the property to finance the installation or modification of permanent improvements fixed to the property to achieve reduced energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature.

B. Local Government has established a program under the PACE Act (the “PACE Program”) pursuant to an ordinance dated \_\_\_\_\_, adopted by the Matanuska-Susitna Borough Assembly (the “Ordinance”), and a resolution dated, October 19, 2021, (the “Resolution”), collectively “the Matanuska-Susitna Borough PACE Legislation”). The Local Government has designated Marcia vonEhr, Document Specialist, or her designee (“Authorized Representative”) as its representative authorized to enter into the Assessment, Owner Contract and Capital Provider Contract described herein, and has designated the entire territory within the Matanuska-Susitna Borough as a region (“Region”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Property Owner is the legal and record owner of the qualified real property, located within the Region at \_\_\_\_\_, \_\_\_\_\_, Alaska and more particularly described in Exhibit A, attached hereto and incorporated herein(the “Property”).

D. Property Owner applied to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to reduce energy consumption or demand, and which are or will be fixed to the Property as qualified improvements, as set forth in the PACE Act and PACE Program (the “Qualified Improvements”). The cost of installation or modification of such Qualified Improvements and all related eligible costs pursuant to the PACE Act and otherwise described in the PACE Program have been determined to be a qualified energy improvement project and collectively referred to herein as the “Project”. Property Owner has requested that Local Government enter into this Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment (the “Assessment”) on the Property as set forth in the Notice of Contractual Assessment Lien to be filed in the property records of the recording district of Palmer, Alaska (the “Notice of Contractual Assessment Lien”), a copy of which is attached hereto as Exhibit B and made a part hereof, to repay the financing of such Project.

E. The financing of such Project will be provided to Property Owner by \_\_\_\_\_ (“Capital Provider”), a qualified Capital Provider selected by Property Owner, pursuant to a written contract executed by Capital Provider and Local Government as required by Section 29.55.105 of the PACE Act and by the PACE Program (the “Capital Provider Contract”). The financing for the Project will include only those costs and fees for which an assessment may be imposed under the PACE Act and Pace Program. Local Government has agreed to maintain and continue the Assessment for the benefit of Capital Provider until such financing is repaid in full and to release the Assessment upon notice from Capital Provider of such payment, or enforce the lien securing the Assessment.

F. Pursuant to Section 29.55.105(a)(2) of the PACE Act, Local Government may contract with the governing body of another taxing unit to perform the duties of the Local Government relating to collection of assessments imposed by the Local Government under this section (the “Agent”).

## AGREEMENT

The parties hereby agree as follows:

1. Imposition of Assessment. In consideration for the financing advanced or to be advanced to Property Owner by Capital Provider for the Project under the PACE Program pursuant to the Capital Provider Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the amount of \$ \_\_\_\_\_ plus all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, PACE Program and the financing documents between Property Owner and Capital Provider (the “Financing Documents”) which are described on Exhibit C attached hereto and made a part hereof by reference. Property Owner promises and agrees to pay such amount and interest to Local Government, in care of or as directed by Capital Provider, in satisfaction of the Assessment imposed pursuant to the Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to secure the payment of such amounts, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. Maintenance and Enforcement of Assessment. In consideration for Capital Provider’s agreement to advance financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Capital Provider until the Assessment, including all interest, fees, penalties, costs, and other sums due under and authorized by the PACE Act, PACE Program and the Financing Documents are paid in full, and to release the Assessment upon notice from Capital Provider of such final payment. Local Government agrees to collect Assessment Installments, as defined here, and to enforce the Assessment against the Property for the benefit of Capital Provider in the event of a payment default by Property Owner. When the Assessment amount together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, upon notice from Capital Provider that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Owner Contract. Thereafter, the Local Government will record the release.

3. Installments. The Assessment, including the amount financed and interest, is due and payable in installments (“Assessment Installments”) as set forth in the Notice of Contractual Assessment Lien and the Financing Documents. As of the effective year [#] and each year thereafter for the term identified in the Notice of Contractual Assessment Lien, the Assessment shall be placed on the Property’s tax bill or a stand-alone bill for account #[ENTER PROPERTY ID] by the Local Government or its Agent. Property Owner agrees that the Assessment will be included on the Property’s tax bill or stand-alone bill and

agrees to repay all Assessment obligations which are due and payable to the Local Government on the date designated on the Property's tax bill or stand-alone bill for payment of the Assessment Installment. [The Assessment shall include: (1) an application fee paid by Property Owner to Local Government at loan closing, and (2) a recurring administration fee paid by Property Owner to the Local Government.]

4. Assignment of Right to Receive Installments. Capital Provider will have the right to assign or transfer the right to receive the Assessment Installments of the financing secured by the Assessment, provided all of the following conditions are met:

(a) Local Government [and Agent] are notified in writing of the assignment or transfer and the address to which payment of the future Assessment Installments should be mailed at least 30 days before the next Assessment Installment is due according to the payment schedule included in the Notice of Contractual Assessment Lien and the Financing Documents; and

(b) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Capital Provider's obligations under Capital Provider Contract.

(c) Upon written notice to Property Owner, Local Government, [and Agent] of an assignment or transfer of the right to receive payments under the Capital Provider Contract that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under such Capital Provider Contract accruing after the date of the assignment assumed by and transferred to such assignee or transferee and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the payments under the Capital Provider Contract that does not meet all of these conditions is void.

4. Lien Priority and Enforcement. Pursuant to Section 29.55.135 of the PACE Act,

(a) Delinquent Assessment Installments will incur interest and penalties in the same manner and in the same amount as delinquent [taxes ; OR assessments] as provided in [AS 29.45.250 ; OR INSERT MUNICIPAL CODE; OR INSERT "the Ordinance"']. In addition to penalties and interest as described herein, which shall be retained by the Capital Provider, Local Government will recover costs and expenses, including attorney fees, in suit to collect a delinquent Assessment Installment in the same manner as in a suit to collect a delinquent property tax.

(b) The Assessment, together with all authorized fees, penalties and interest thereon,

(1) is a lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the of the property records of Palmer, Alaska until the financing secured by the Assessment and all authorized fees, penalties and interest are paid in full; and

(2) such lien is prior and paramount to all liens except municipal tax liens and special assessments, pursuant to Section 29.55.135 of the PACE Act.

(c) The lien created by the Assessment runs with the land, and pursuant to Section 29.55.135 of the PACE Act, any portion of the Assessment that has not yet become due is not eliminated by foreclosure of: (i) a property tax lien. In the event of a sale or transfer of the Property, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will without further action by Local Government, be transferred to, and assumed by, the succeeding property owner.

(d) In the event of a default by Property Owner in payment of the Assessment Installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government in the same manner according to AS 29.45.320 – 29.45.470 that a property tax lien against real property may be enforced by a local government.

(e) In a suit to collect a delinquent Assessment Installment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount consistent with a suit to collect a delinquent property tax. Capital Provider shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Assessment Installment.

(f) After the Notice of Contractual Assessment Lien is recorded in the real property records of Matanuska-Susitna Borough, the lien created by the Assessment may not be contested on the basis that the improvement is not a “Qualified Improvement” or the project is not a “Project” under the terms of the PACE Act or PACE Program.

5. Written Contract Required by PACE Act. This Owner Contract constitutes a written contract for the Assessment between the Property Owner and Local Government as required by Section 29.55.110 of the PACE Act. The Notice of Contractual Assessment Lien will be recorded in the property records of Palmer, Alaska as notice of the contractual Assessment, in accordance with the requirements of Section 29.55.130 of the PACE Act.

6. Qualified Improvements. Property Owner agrees that all improvements purchased, constructed and/or installed through financing obtained pursuant to this Owner Contract shall be permanently affixed to the Property and will transfer with the Property to a transferee in the event of and sale or assignment of the Property.

7. Construction and Definitions. This Owner Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the PACE Program, and/or (2) the PACE Act.

8. As required by Section 29.55.155 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of this Owner Contract of Property Owner’s intention to participate in the PACE Program.

9. Binding Effect. This Owner Contract inures to the benefit of Local Government and is binding upon Property Owner, its heirs, successors, and assigns.

10. Notices. All notices and other communications required or permitted by this Owner Contract shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at its address shown below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

11. Governing Law. This Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Alaska.

12. Entire Agreement. This Owner Contract constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

13. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Owner Contract as may be reasonably necessary or required.

14. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15. Counterparts. This Owner Contract may be executed in any number of counterparts, each counterpart may be delivered originally or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Costs. No provisions of this Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. Notwithstanding the foregoing, if Local Government takes title to the Property, Local Government will be subject to payment of future Assessment Installments due.

17. No Personal Liability. The Property Owner acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of any third-party who enters into a contract with the Local Government to provide administrative services for the PACE Program are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

18. Recitals. The Recitals to this Owner Contract are incorporated into this Owner Contract by this reference as if set forth in their entirety in this Owner Contract

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SIGNATURE PAGE TO PACE OWNER CONTRACT [1 OF 2]

PROPERTY OWNER: \_\_\_\_\_

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SIGNATURE PAGE TO PACE OWNER CONTRACT [2 OF 2]

LOCAL GOVERNMENT: \_\_\_\_\_

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**EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY**

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**EXHIBIT B: NOTICE OF CONTRACTUAL ASSESSMENT LIEN PURSUANT TO PROPERTY  
ASSESSED CLEAN ENERGY ACT**

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**EXHIBIT C: DESCRIPTION OF FINANCING DOCUMENTS**

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**EXHIBIT 2**

**FORM CONTRACT WITH CAPITAL PROVIDER**

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## PACE CAPITAL PROVIDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) CAPITAL PROVIDER CONTRACT (this “Capital Provider Contract”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Matanuska-Susitna Borough (“Local Government”) and \_\_\_\_\_ (together with its successors and assigns, “Capital Provider”).

### RECITALS

A. The Municipal Property Assessed Clean Energy Act, Alaska Statutes 29.55, as amended from time to time (the “PACE Act”), authorizes the governing body of a local government to establish an energy improvement assessment program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with record owners of existing privately owned commercial or industrial property to impose assessments on the property to finance the installation or modification of permanent improvements fixed to the property to achieve reduced energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature.

B. Local Government has established a program under the PACE Act (the “PACE Program”) pursuant to an ordinance dated \_\_\_\_\_, adopted by the Matanuska-Susitna Borough, (the “Ordinance”), and a resolution dated, October 19, 2021, (the “Resolution”), collectively “the Matanuska-Susitna Borough PACE Legislation”). The Local Government has designated Marcia vonEhr, Document Specialist, or her/his designee (“Authorized Representative”) as its representative authorized to enter into the Assessment, Owner Contract and Capital Provider Contract described herein, and has designated the entire territory within the Matanuska-Susitna Borough as a region (“Region”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Property Owner is the legal and record owner of the qualified real property, located within the Region at \_\_\_\_\_, \_\_\_\_\_, Alaska and more particularly described in Exhibit A, attached hereto and incorporated herein (the “Property”). Property Owner applied to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to reduce energy consumption or demand, and which are or will be fixed to the Property as qualified improvements, as set forth in the PACE Act and PACE Program (the “Qualified Improvements”). The cost of installation or modification of such Qualified Improvements and all related eligible costs pursuant to the PACE Act and otherwise described in the PACE Program have been determined to be a qualified energy improvement project and collectively referred to herein as the “Project”.

D. Property Owner and Local Government have entered into a written contract as required by Section 29.55.105 of the PACE Act, a copy of which is attached hereto as Exhibit B and made a part hereof (the “Owner Contract”), in which Property Owner has requested that Local Government impose an assessment (the “Assessment”) on the Property as set forth in the Notice of Contractual Assessment Lien to be filed in the property records of the recording district of Palmer, Alaska (the “Notice of Contractual Assessment Lien”), a copy of which is attached to the Owner Contract as Exhibit B, to repay the financing of such Project.

E. The financing for the Project (the “Financing”) will be provided to Property Owner by Capital Provider in accordance with financing documents which are described on Exhibit C attached hereto and made a part hereof (the “Financing Documents”). Such Financing includes only those costs and fees for which an assessment may be imposed under the PACE Act and Pace Program. This Capital Provider Contract is entered into between Local Government and Capital Provider, as required by Section 29.55.105 of the PACE Act, to authorize the Local Government to service the Assessment to provide for repayment of the Financing.

F. Pursuant to Section 29.55.105(a)(2) of the PACE Act, Local Government may contract with the governing body of another taxing unit to perform the duties of the Local Government relating to collection of assessments imposed by the Local Government under this section (the “Agent”).

## **AGREEMENT**

The parties hereby agree as follows:

1. Maintenance and Enforcement of Assessment. Capital Provider agrees to provide the Financing for the Project in the total amount of \$ \_\_\_\_\_, according to the terms set out in the Financing Documents. In consideration for the Financing provided or to be provided by Capital Provider for the Project, and subject to the terms and conditions of this Capital Provider Contract, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Capital Provider until the Financing, all contractual interest, any prepayment premium, additional penalties and interest imposed by the Capital Provider under the Financing Documents according to the Financing Documents, and any statutory penalties, interest, attorney’s fees, or costs accrued in the event of default are paid in full. Local Government will not release the Assessment until which time Capital Provider notifies Local Government that all amounts owing have been paid in full. Upon notice from Capital Provider that all amounts owing have been paid in full, Local Government will execute a release of the Assessment. Thereafter, the Authorized Representative will record the release. Local Government agrees to collect Assessment Installments, as defined here, and to enforce the Assessment against the Property for the benefit of Capital Provider in the event of a payment default by Property Owner in accordance with the provisions set forth in paragraph 6.

2. Installments. The Assessment, including the amount financed and interest, is due and payable in installments (“Assessment Installments”) as set forth in the Notice of Contractual Assessment Lien and the Financing Documents.

3. Assignment of Right to Receive Installments. Capital Provider will have the right to assign or transfer the right to receive the installments of the Assessment, provided all of the following conditions are met:

- (a) Local Government [and Agent] are notified in writing of the assignment or transfer and the address to which payment of the future Assessment Installments should be mailed at least 30 days before the next Assessment Installment is due according to the payment schedule included in the Notice of Contractual Assessment Lien and the Financing Documents; and
- (b) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Capital Provider’s obligations under this Capital Provider Contract.



(c) Upon written notice to Property Owner, Local Government, [and Agent] of an assignment or transfer of the right to receive payments hereunder that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under this Capital Provider Contract accruing after the date of the assignment assumed by and transferred to such assignee or transferee and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive payments hereunder that does not meet all of these conditions is void.

4. Financing Responsibility. Capital Provider assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Capital Provider's obligations and responsibilities thereunder.

5. Servicing of Assessment.

(a) Servicing. As of the effective year [#] and each year thereafter for the term identified in the Notice of Contractual Assessment Lien, the Assessment shall be placed on the Property's tax bill or a stand-alone bill for account #[ENTER PROPERTY ID] by the Local Government or its Agent. Pursuant to the Owner Contract, the Property Owner has agreed that the Assessment will be included on the Property's tax bill or stand-alone bill and agrees to repay all Assessment obligations which are due and payable to the Local Government on the date designated on the Property's tax bill or stand-alone bill for payment of the Assessment Installment. [The Assessment shall include: (1) an application fee paid by Property Owner to Local Government at loan closing, and (2) a recurring administration fee paid by Property Owner to the Local Government.]

(b) Remittances. All amounts collected by Local Government related to an Annual Installment shall be remitted from the Local Government to the Capital Provider within thirty (30) business days of receipt by the Local Government.

6. Lien Priority and Enforcement. As provided in the Owner Contract and Section 29.55.135 of the PACE Act,

(a) Delinquent Assessment Installments will incur interest and penalties in the same manner and in the same amount as delinquent [taxes ; OR assessments] as provided in [AS 29.45.250 ; OR INSERT MUNICIPAL CODE; OR INSERT "the Ordinance"]. In addition to penalties and interest as described herein, which shall be retained by the Capital Provider, Local Government will recover costs and expenses, including attorney fees, in suit to collect a delinquent Assessment Installment in the same manner as in a suit to collect a delinquent property tax.

(b) The Assessment, together with all authorized, penalties and interest thereon,

(1) is a lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the of the property records of Palmer, Alaska, until the financing secured by the Assessment and all authorized, penalties and interest are paid in full; and

(2) such lien is prior and paramount to all liens except municipal tax liens and special assessments, pursuant to Section 29.55.135 of the PACE Act.

(c) The lien created by the Assessment runs with the land, and pursuant to Section 29.55.135 of the PACE Act, any portion of the Assessment that has not yet become due is not eliminated by foreclosure of: (i) a property tax lien. In the event of a sale or transfer of the Property, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will without further action by Local Government, be transferred to, and assumed by, the succeeding property owner.

(d) In the event of a default by Property Owner in payment of the Assessment Installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government in the same manner according to AS 29.45.320 – 29.45.470 that a property tax lien against real property may be enforced by a local government.

(e) In a suit to collect a delinquent Assessment Installment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount consistent with a suit to collect a delinquent property tax. Capital Provider shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Assessment Installment.

(f) After the Notice of Contractual Assessment Lien is recorded in the real property records of the Palmer, Alaska, the lien created by the Assessment may not be contested on the basis that the improvement is not a "Qualified Improvement" or the project is not a "Project" under the terms of the PACE Act or PACE Program.

(g) Local Government agrees to send an annual notice of assessment to the Property Owner with the annual property tax notice each year there is an Assessment lien balance. This notification can be listed on page one of said tax notice or as a separate notification. Pursuant to Alaska Statute 29.45.350 the Capital Provider hereby requests the Local Government send to the Capital Provider a notice of any foreclosure list that includes the Property.

7. Limitations on Local Government's Actions. Without the prior written consent of Capital Provider, Local Government will not enter into any amendment or modification of or deviation from the Owner Contract. Notwithstanding the responsibilities of Local Government under this Capital Provider Contract, Local Government will not institute any legal action with respect to the Owner Contract, the Assessment, or the assessment lien without the prior written request of Capital Provider.

8. Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Capital Provider Contract, and no implied duties on the part of Local Government are to be read into this Capital Provider Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Capital Provider. Local Government may request written instructions for action from Capital Provider and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting. No provisions of this Capital Provider Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. Notwithstanding the foregoing or anything contained herein to the contrary, if Local Government takes title to the Property, Local Government will be obligated to pay any Assessment Installments due or that become due while Local Government holds title to the Property, pursuant to the PACE Act and the Owner Contract.

9. No Personal Liability. The Property Owner acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and

contractors of any third-party who enters into a contract with the Local Government to provide administrative services for the PACE Program are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

10. Capital Provider's Warranties and Representations. With respect to this Capital Provider Contract, Capital Provider hereby warrants and represents that on the date on which Capital Provider executes this Capital Provider Contract:

(a) Capital Provider is a qualified Capital Provider under the PACE Program and is fully qualified under the PACE Program to enter into this Capital Provider Contract and the Financing Documents;

(b) Capital Provider has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Capital Provider has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government or any agent or employee of Local Government, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

11. Written Contract Required by the PACE Act. This Capital Provider Contract constitutes a written contract between Local Government and Capital Provider, pursuant to Section 29.55.105(b) and 29.55.110(a)(2) of the PACE Act.

12. Construction and Definitions. This Capital Provider Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the Notice of Contractual Assessment Lien, (2) the Owner Contract, (3) the PACE Program, and/or (4) the PACE Act.

13. Binding Effect. This Capital Provider Contract is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

14. Notices. All notices and other communications required or permitted hereunder shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

15. Governing Law. This Capital Provider Contract shall in all respects be governed by and construed in accordance with the laws of the State of Alaska.

16. Entire Agreement. This Capital Provider Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

17. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

18. Counterparts. This Capital Provider Contract may be executed in any number of counterparts, each counterpart may be delivered originally or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

19. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this Capital Provider Contract. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

20. Recitals. The Recitals to this Capital Provider Contract are incorporated into this Capital Provider Contract by this reference as if set forth in their entirety in this Capital Provider Contract.

DRAFT

SIGNATURE PAGE TO PACE CAPITAL PROVIDER CONTRACT [1 OF 2] CAPITAL PROVIDER:  
\_\_\_\_\_ By: Name: Title: Address:

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SIGNATURE PAGE TO PACE CAPITAL PROVIDER CONTRACT [2 OF 2] LOCAL  
GOVERNMENT:

\_\_\_\_\_ By: AUTHORIZED REPRESENTATIVE  
Pursuant to Matanuska-Susitna Borough Code XX.XXX Name: Title: Address:

DRAFT

**EXHIBIT A: PROPERTY LEGAL DESCRIPTION**

DRAFT



**EXHIBIT B: OWNER CONTRACT & NOTICE**

DRAFT

**EXHIBIT C: LIST OF FINANCING DOCUMENTS**

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**THIS DOCUMENT IS FOR INFORMATIONAL PURPOSES ONLY AND NOT FOR THE PURPOSE OF PROVIDING LEGAL ADVICE. YOU SHOULD CONSULT YOUR ATTORNEY TO OBTAIN ADVICE WITH REGARD TO THE CONTENT, AND USE, OF THIS DOCUMENT.**

**AFTER RECORDING, RETURN TO:**

Attention: \_\_\_\_\_  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, AK 99\_\_\_\_\_

**NOTICE OF CONTRACTUAL ASSESSMENT LIEN  
PURSUANT TO  
PROPERTY ASSESSED CLEAN ENERGY ACT**

**RECITALS**

A. The Municipal Property Assessed Clean Energy Act, Alaska Statutes 29.55, as amended from time to time (the “**PACE Act**”), authorizes the governing body of a local government to establish an energy improvement assessment program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with record owners of existing privately owned commercial or industrial property to impose assessments on the property to finance the installation or modification of permanent improvements fixed to the property to achieve reduced energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.

B. Matanuska-Susitna Borough (“**Local Government**”) has established a program under the PACE Act (the “**PACE Program**”) pursuant to an ordinance dated \_\_\_\_\_, adopted by the Matanuska-Susitna Borough Assembly (the “**Ordinance**”), and a resolution dated, October 19, 2021, (the “**Resolution,**” and together with the Ordinance, “**the Matanuska-Susitna Borough PACE Legislation**”). The Local Government has designated Matanuska-Susitna Borough employee, Marcia vonEhr, Document Specialist, or her/his designee (“**Authorized Representative**”) as its representative authorized to enter into and enforce the Assessment, Owner Contract and Capital Provider Contract described herein, and has designated the entire territory within the Matanuska-

Susitna Borough as a region (“**Region**”) within which the Authorized Representative and the record owner of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. \_\_\_\_\_ (“**Property Owner**”) is the legal and record owner of the qualified real property, located within the Region at \_\_\_\_\_, \_\_\_\_\_, Alaska and more particularly described in Exhibit A, attached hereto and incorporated herein (the “**Property**”).

D. Property Owner applied to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to reduce energy consumption or demand, and which are or will be fixed to the Property as qualified improvements, as set forth in the PACE Act and PACE Program (the “**Qualified Improvements**”) described in Exhibit B attached hereto. The cost of installation or modification of such Qualified Improvements and all related eligible costs pursuant to the PACE Act and otherwise described in the PACE Program have been determined to be a qualified energy improvement project (the “**Project**”). Property Owner has entered into a written contract (the “**Owner Contract**”) with Local Government pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment on the Property to repay the financing of such Project.

E. The financing of such Project will be provided to Property Owner by \_\_\_\_\_ (“**Capital Provider**”), a qualified capital provider selected by Property Owner, pursuant to a written contract executed by Capital Provider and Local Government as required by Section 29.55.105 of the PACE Act and by the PACE Program (the “**Capital Provider Contract**”).

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 29.55.130 of the PACE Act that it has imposed an assessment on the Property in the amount of \$ \_\_\_\_\_, as set forth on Exhibit C attached hereto, which together with all interest, fees, penalties, costs and other sums due under, and authorized by, the PACE Act, PACE Program and the financing documents between Property Owner and Lender (the “**Financing Documents**”) is herein referred to as the “**Assessment**”.

Pursuant to Section 29.55.135 of the PACE Act,

1. The Assessment, together with all authorized fees, penalties and interest thereon,
  - (i) is a lien against the Property from the date on which this Notice of Contractual Assessment Lien is filed in the property records of the Matanuska-Susitna Borough until the financing secured by the Assessment, and all authorized fees, penalties and interest, are paid in full; and
  - (ii) such lien is prior and paramount to all liens except municipal tax liens and special assessments, pursuant to Section 29.55.135 of the PACE Act.

2. The lien created by the Assessment runs with the land, and pursuant to Section 29.55.135 of the PACE Act, any portion of the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien [or (ii) the lien for any past due portion of the Assessment]. In the event of a sale or transfer of the Property, the obligation for the Assessment and the Property Owner’s obligations under the Financing Documents will, without further action by Local Government, be transferred to, and assumed by, the succeeding Property owner.
3. In the event of a default by Property Owner in payment of the Assessment or any installment thereof, the lien created by the Assessment will be enforced by Local Government in the same manner that a property tax lien against real property may be enforced by a local government as provided in AS 29.45.320 – 29.45.470.
4. After this Notice of Contractual Assessment Lien is filed in the property records of Palmer, Alaska, the lien created by the Assessment may not be contested on the basis that the improvement is not a “Qualified Improvement” or the project is not a “Project” under the terms of the PACE Act or PACE Program.

EXECUTED on \_\_\_\_\_, \_\_\_\_\_.

LOCAL GOVERNMENT:  
\_\_\_\_\_

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE

**ACKNOWLEDGEMENT**

STATE OF ALASKA

§

\_\_\_\_\_ JUDICIAL DISTRICT§

This certifies that on \_\_\_\_ \_\_, 20\_\_, before me, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_ (signer), to me know to be \_\_\_\_\_, of the Local Government and acknowledged to me that she/he knew the contents of Notice of Contractual Assessment Lien pursuant to Property Assessed Clean Energy Act and duly executed such instrument on behalf of the Local Government.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

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**EXHIBIT A**  
**PROPERTY DESCRIPTION**

DRAFT



**EXHIBIT B**

**QUALIFIED IMPROVEMENTS**

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