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FORM OF PROGRAM AGREEMENT

GARDEN STATE PROGRAM AGREEMENT
BETWEEN
THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
AND
[NAME OF MUNICIPALITY]

THIS GARDEN STATE PROGRAM AGREEMENT (this “Garden State Program Agreement”) is made and entered into as of the ____ day of _____, 202_, by and between [MUNICIPALITY] (the “Municipality”), a municipal corporation of the State of New Jersey (the “State”), having an address at _____, in the County of [COUNTY], and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic of the State (the “Authority”; and together with the Municipality, the “Parties”, and each, a “Party”).

Capitalized terms not defined herein shall have the meanings given such terms in the Program Guidelines.

BACKGROUND

WHEREAS, the Authority has established the Garden State C-PACE Program (the “Program”), and developed the Garden State C-PACE Program Guidelines and Supplemental Guidelines (as may be amended from time to time, collectively the “Program Guidelines”), pursuant to and in accordance with P.L. 2021, c. 201 (N.J.S.A. 34:1B-374 et seq.), as may be amended, the “C-PACE Act”), to facilitate private and other loan financing for clean energy and resiliency-related improvements to commercial and certain other types of properties (each, a “C-PACE Project”); and

WHEREAS, the C-PACE Act authorizes the imposition of a voluntary local improvement assessment in accordance with N.J.S.A. 40:56-1 et seq. (a “C-PACE Assessment”) at the request of an Eligible Owner to provide security for the repayment to a Qualified Capital Provider of Direct Financing for a C-PACE Project, provided that the municipality in which the Eligible Property is located has adopted an Opt-in Ordinance to participate in the Program and has entered into a Garden State Program Agreement; and

WHEREAS, the Municipality has adopted an Opt-in Ordinance authorizing its participation in the Program and its execution of this Garden State Program Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto mutually covenant and agree as follows:

Section 1 - Purpose.

The Authority and the Municipality are entering into this Garden State Program Agreement for the purpose of setting forth their respective obligations in connection with the Program in accordance with the C-PACE Act and the Program Guidelines.

Section 2 - Rights and Obligations of the Authority.

A. C-PACE Program Guidelines; Uniform Assessment Documents. Pursuant to the C-PACE Act, the Authority has developed and published Program Guidelines, which are inclusive of the Uniform Assessment Documents. A copy of the current Program Guidelines, as in effect on the date hereof, can be found on the Authority's Program website. The Authority may, from time to time and at its discretion, revise the Program Guidelines, including one or more of the Uniform Assessment Documents. In the event that the Program Guidelines are revised, the revised Program Guidelines shall not apply retroactively to any prior approvals, actions, or fees paid for C-PACE Projects that were previously approved but shall be effective and applicable to all C-PACE Projects in the Municipality upon their publication on the Authority's Program website.

B. Applications for C-PACE Projects. As set forth in the Program Guidelines, an individual or entity seeking to receive a Direct Financing shall submit a completed application to the Authority for the Authority to determine if the individual or entity, the property, and the proposed project are eligible. The Authority shall inform the Municipality of the Authority's determinations with respect to the eligibility of proposed projects within the Municipality for which the Authority has received applications.

C. Applications by Capital Providers. As set forth in the Program Guidelines, a Capital Provider seeking to be qualified to participate in the Program shall submit a completed application to the Authority for the Authority to determine if the Capital Provider is eligible. In addition, the Program Guidelines set forth the conditions and requirements for participation by Qualified Capital Providers in the Program. The Authority shall maintain a list of Qualified Capital Providers on the Authority's Program website.

D. Use of Third-Party Administrators; Use of State Government Agencies. Pursuant to the C-PACE Act, during the term of this Garden State Program Agreement, the Authority: (i) may contract with one or more third-party administrators, whether private, public or quasi-public, or for-profit or not-for-profit, to assist the Authority in its implementation or administration, or a combination thereof, of the Program and may delegate any duties under the program to one or more such third-party administrators, provided that the Authority shall not delegate its responsibility for general oversight of the Program, or (ii) may enter into a memorandum of agreement with one or more State government agencies or instrumentalities whereby any of the powers the Authority may exercise or responsibilities it must fulfill pursuant to the C-PACE Act may be exercised or fulfilled, as the case may be, by such agency or instrumentality. If the Authority contracts with one or more third-party administrator or enters into a memorandum of

agreement with one or more State government agencies or instrumentalities, the Municipality agrees to cooperate with such third-party administrator or State agency or instrumentality and to enter into such amendments to this Garden State Program Agreement or such new agreements with respect to the Program as may be required at such time in connection with the change in Program administration, provided that any such new agreements will contain only provisions required to enable the new entity to undertake the administration of the Program.

Section 3 - Rights and Obligations of the Municipality.

A. Compliance with the Garden State C-PACE Program. The Municipality acknowledges and agrees that it has reviewed the C-PACE Act and the Program Guidelines and it shall comply with the C-PACE Act and the Program Guidelines. The Municipality shall remain in compliance at all times with all requirements and obligations of the Garden State C-PACE Program, the C-PACE Act, this Garden State Program Agreement, the Program Guidelines (as such Program Guidelines may be revised from time to time), and each Uniform Assessment Document to which the Municipality is a party. Without limiting the generality of the foregoing, in connection with each C-PACE Project in the Municipality, the Municipality shall be obligated to (i) enter into a C-PACE Assessment Agreement with the Eligible Owner; (ii) enter into a Notice of Assessment; (iii) enter into an Assignment Agreement with the Qualified Capital Provider; and (iv) enter into any amendment(s) to such C-PACE Assessment Agreement, Notice of Assessment, or Assignment Agreement, as the Eligible Owner and the Qualified Capital Provider shall jointly request. Each such Uniform Assessment Document shall be substantially in the form of such document included in the Program Guidelines.

B. Designation of Municipal C-PACE Liaison. The Mayor or municipal manager, as appropriate to the form of government, shall designate an official of the Municipality, who shall be known as the Municipal C-PACE Liaison, to serve as the Municipality's liaison to the Garden State C-PACE Program. The Municipality shall have a designated Municipal C-PACE Liaison at all times during the Municipality's participation in the Garden State C-PACE Program. The Municipal C-PACE Liaison shall be or become qualified by training and experience to serve in that role. The Municipal C-PACE Liaison shall be responsible for coordinating within the Municipality the operation of the Garden State C-PACE Program in order to ensure the Municipality's compliance with the Garden State C-PACE Program, including compliance with the Program Guidelines, compliance with this Garden State Program Agreement, enforcement of C-PACE Assessments, and establishment of the appropriate municipal processes to fully participate in the Garden State C-PACE Program.

C. C-PACE Assessment Treated as a Municipal Lien. A C-PACE Assessment shall be treated as a municipal lien rather than a contractual lien for all purposes, including for the purposes of this Garden State Program Agreement.

D. Obligation to Levy, Bill, Collect, Remit, and Enforce C-PACE Assessments.

1. Payments of the C-PACE Assessment shall commence as set forth in the C-PACE Assessment Agreement. The Municipality shall levy, bill and collect payments for the C-PACE Assessments in accordance with the Repayment Schedule attached to the C-PACE Assessment Agreement. The Repayment Schedule may be amended from time to time by

agreement of the Qualified Capital Provider and the Eligible Owner. Following its receipt of any such payments, the Municipality shall remit such payment to the applicable Qualified Capital Provider within thirty (30) days following the receipt of the payment by the Municipality.

2. If any payment of a C-PACE Assessment is not made when that payment should have become due, or later, consistent with any grace period provided or extended by the Municipality for the payment of property tax bills as may be permitted or required by law, the Municipality shall impose interest thereon (“statutory interest”) at the same rate as shall be imposed upon unpaid property taxes in the Municipality. Such statutory interest shall be in addition to any accrued interest and any amount fixed as a penalty for delinquency, pursuant to the Direct Financing Agreement.

3. All delinquent payments of C-PACE Assessments, together with statutory interest thereon, accrued interest, and any penalties for such delinquency, shall be collected and enforced in the same manner as unpaid property taxes, which may include accelerated tax sales. The proceeds of the tax sale shall also pay the outstanding past unpaid amounts of the C-PACE Assessment. The remaining balance not delinquent on a C-PACE Assessment shall not be subject to acceleration or extinguishment in the event of a default in payment.

4. Any statutory interest collected by the Municipality on a delinquent C-PACE Assessment shall be retained by the Municipality. Any accrued interest, or any amount fixed as a penalty for delinquency pursuant to the Direct Financing Agreement shall be remitted to the Qualified Capital Provider.

5. If a Property Owner is delinquent on a C-PACE Assessment as well as delinquent on taxes, charges, or other assessments, the Municipality shall apply any payment made by the Property Owner to any and all such other delinquencies before applying any payment to any delinquent C-PACE Assessment.

6. The Municipality acknowledges that in the event that any lien on an Eligible Property shall be exposed to tax sale, pursuant to the “tax sale law,” N.J.S.A. 54:5-1 et seq., and is struck off and sold to the Municipality, the C-PACE Assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate described in the C-PACE Assessment, paramount to all prior or subsequent alienations and descents of the real estate or encumbrances, except subsequent taxes, charges, or other assessments.

7. Notwithstanding the obligations of the Municipality pursuant to N.J.S.A. 54:5-53.1, while the Municipality holds the lien or owns the Eligible Property, the Municipality shall not be responsible for or required to make any payment from its treasury or any other source in furtherance of or to satisfy the C-PACE Assessment.

8. The Municipality shall not bear any other responsibility in furtherance or satisfaction of a C-PACE Assessment, except that the Municipality acknowledges and agrees that a Qualified Capital Provider may seek to compel the Municipality to enforce a lien through an action to foreclose.

9. The Municipality’s appropriate administrative personnel are authorized to make payments to the Qualified Capital Provider or its designee in accordance with the

Assignment Agreement without the necessity of prior approval from the governing body, in accordance with N.J.S.A. 40A:5-17 and the appropriate provisions of the Local Fiscal Affairs Law, N.J.S.A. 40A:5-1 et seq.

E. Assignment of C-PACE Assessments.

1. Pursuant to an Assignment Agreement between the Municipality and a Qualified Capital Provider, a C-PACE Assessment shall be assigned directly by the Municipality, and any assignee thereof, to a Qualified Capital Provider, as security for the Direct Financing provided by the Qualified Capital Provider to finance a C-PACE Project.

2. The assignment of C-PACE Assessments shall be an absolute assignment of all of the Municipality's right, title, and interest in and to the C-PACE Assessments, except for the Municipality's obligations to levy, bill, collect, remit, and enforce C-PACE Assessments.

F. Obligation to Report Certain Events to the Authority. The Municipality shall maintain records of the following events and the Municipal C-PACE Liaison shall report such events to the Authority no later than thirty (30) days after the occurrence of any such event: (i) a delinquency in the payment of a C-PACE Assessment; (ii) the commencement of foreclosure proceedings with respect to a C-PACE Assessment; and (iii) the completion of foreclosure proceedings with respect to a C-PACE Assessment.

G. Municipal C-PACE Fees.

1. Closing Fee: The Municipality shall be entitled to charge an Eligible Owner a Closing Fee at the closing of the Direct Financing for the Municipality's activities to prepare for the ongoing billing, collecting, and remittance of the C-PACE Assessment with respect to a C-PACE Project. The amount of the Closing Fee shall be as set forth in Schedule I, shall not be revised without providing prior written notice to the Authority, and shall not exceed the amount set forth in the Program Guidelines. Any increase in the amount of the Closing Fee shall not apply with respect to any C-PACE Project for which the Eligible Owner's completed application to the Authority was filed prior to the date of implementation of the increase.

2. Municipal Servicing Fee: The Municipality shall be entitled to charge an Eligible Owner a Municipal Servicing Fee with respect to each C-PACE Project of the Eligible Owner, for the Municipality's billing, collection and remittance services rendered with respect to such C-PACE Project. The Annual Servicing Fee shall be charged each calendar year, or part thereof, in which a C-PACE Assessment is in effect with respect to such C-PACE Project. The Annual Servicing Fee may be billed together with the C-PACE Assessment and payable in respect of one quarter each year, such amount to be retained by the Municipality before remitting the balance to the Qualified Capital Provider, or the Annual Servicing Fee may be billed separately. The amount of the Annual Servicing Fee shall be as set forth in Schedule I, shall not be revised without providing prior written notice to the Authority, and shall not exceed the amount set forth in the Program Guidelines. Any increase in the amount of the Annual Servicing Fee shall not apply retroactively to any prior Annual Servicing Fee paid for a C-PACE project that was previously approved but shall apply to all prospective Annual Service Fees for all C-PACE Projects, including any C-PACE Project with an existing C-PACE Assessment.

H. Recording of C-PACE Project Documents. The Municipality acknowledges and agrees that certain Uniform Assessment Documents and each amendment to such documents are required to be recorded within the time and in the manner as required in the Program Guidelines. The Municipality shall designate on Schedule I whether the responsibility to record or arrange for the recording of such documents shall be the Municipality's or the Qualified Capital Provider. The Municipality's designation as set forth on Schedule I shall not be revised without providing prior written notice to the Authority, and any such revision shall not apply retroactively to any recording for a C-PACE Project that was previously approved but shall apply to all prospective recordings for all C-PACE Projects, including any C-PACE Project with an existing C-PACE Assessment.

I. Indemnification. To the fullest extent permitted by Applicable Law, the Municipality shall release, defend, indemnify and hold harmless the Authority and its directors, employees, consultants, agents, successors, and assigns (collectively, "Indemnified Parties") from and against any and all liability for losses (including property damage, injury or death) arising from third party claims to the extent such losses arise out of, or as a consequence of, the subject matter of this Garden State Program Agreement, provided, however, that the foregoing indemnification and protections shall not extend to any losses, claims, damages, liabilities, or costs arising from the gross negligence or willful misconduct of the Indemnified Parties.

Section 4 – Term; Termination for Convenience; Termination for Cause.

A. Commencement of Term. The term of this Garden State Program Agreement shall commence upon the date first written above.

B. Termination of Participation by the Municipality: The Municipality may terminate its participation in the Program for any reason by providing ninety (90) days prior written notice to the Authority or in the case of a material change to the Program, by providing written notice to the Authority within sixty (60) days of the material change to the Program with such a termination being effective fifteen (15) days after the written notice; provided, however, that any termination shall not be effective with respect to any continuing obligations of the Municipality relating to any C-PACE Assessments that have not been paid or otherwise discharged in full, and all such continuing obligations of the Municipality relating to such C-PACE Assessments shall continue until all such C-PACE Assessments have been paid or otherwise discharged in full.

D. Termination by Authority for Cause. If the Municipality fails to comply with a requirement of the Program, including, but not limited to, requirements in the Program Guidelines or in this Garden State Program Agreement, the Authority may revoke the designation as a Participating Municipality, which shall be in addition to any remedy any other individual or entity may have; provided, however, that any such termination for cause shall not relieve or terminate the Municipality's duties, obligations, and responsibilities with respect to any C-PACE Project located within the Municipality that received the approval of the Authority prior to the date of termination and with respect to all continuing obligations of the Municipality relating to any C-PACE Assessments that have not been paid or otherwise discharged in full, and all such continuing obligations of the Municipality relating to such C-PACE Assessments shall survive and continue until all such C-PACE Assessments have been paid or otherwise discharged in full.

E. Ongoing Obligation with respect to Continuing C-PACE Assessments. Notwithstanding anything to the contrary in this Garden State Program Agreement, for so long as there are any C-PACE Projects on Eligible Properties located within the Municipality that are subject to C-PACE Assessments, the Municipality's obligations hereunder shall survive and remain in full force and effect with respect to such C-PACE Assessments until all such C-PACE Assessments have been paid or otherwise discharged in full.

Section 5 – Miscellaneous.

A. Rules of Construction. If and to the extent there is any conflict or inconsistency between the C-PACE Act and this Garden State Program Agreement, the C-PACE Act shall control. If and to the extent there is any conflict or inconsistency between this Garden State Program Agreement and the Program Guidelines, the Program Guidelines shall control.

B. Severability. If any term or provision of this Garden State Program Agreement, or the application thereof to any person or circumstances, shall, to any extent, be held illegal, invalid or unenforceable by any court of competent jurisdiction, the remainder of this Garden State Program Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held illegal, invalid or unenforceable, shall not be invalidated, rendered unenforceable, or otherwise affected thereby, and each term and provision of this Garden State Program Agreement shall be valid and be enforceable to the fullest extent permitted by law.

C. Counterparts. This Garden State Program 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.

D. Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered by any of the following methods: (i) by first class mail, postage prepaid; (ii) by overnight delivery service; or (iii) by messenger delivery service. Notices may also be sent by confirmed email and shall be deemed to have been given upon confirmation of receipt by either automatic read receipt or email confirmation by the recipient and so long as follow-up notice is sent by the methods set forth in clauses (i), (ii), or (iii) of the previous sentence.

If to the Municipality:

[Address]

Attention:

Email:

Fax:

If to the Authority:

New Jersey Economic Development Authority

36 W. State Street, Trenton, New Jersey 08608

Attention:

Email:

Fax:

E. Amendment and Waivers. Except as otherwise set forth in this Garden State Program Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by the Authority and the Municipality.

F. Governing Law and Venue. This Garden State Program Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of New Jersey. In any action, in equity or law, with respect to the enforcement or interpretation of this Garden State Program Agreement, venue shall be in the County of Mercer State of New Jersey. Any and all claims made or to be made against the Authority based in tort law shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and any and all claims made or to be made against the Authority based in contract law shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. as if incorporated here.

G. 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 Garden State Program Agreement.

H. Headings. The headings in this Garden State Program Agreement are solely for convenience, do not constitute a part of this Garden State Program Agreement, and do not affect its meaning or construction.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Municipality and the Authority have each caused this Garden State Program Agreement to be executed and delivered as of the date first set forth above:

(SEAL)

ATTEST:

[NAME OF MUNICIPALITY]

By: _____
[Name]
[Title]

ATTEST:

**NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY**

By: _____
[Name]
[Title]

[Signature Page to Agreement]

SCHEDULE I

DESIGNATION OF RESPONSIBILITY TO RECORD C-PACE PROJECT DOCUMENTS

Pursuant to Section 3 of the Garden State Program Agreement to which this Schedule I is attached, the Municipality designates the following party to be responsible for the recording of Uniform Assessment Documents, as may be required:

- Municipality
- Qualified Capital Provider

MUNICIPAL C-PACE FEES

Pursuant to Section 3 of the Garden State Program Agreement to which this Schedule I is attached, in accordance with the Program Guidelines and subject to the limitations set forth therein, the Municipality shall charge the following fees to Eligible Owners in connection with C-PACE Assessments:

Closing Fee: \$

Annual Servicing Fee: \$