

**WASHOE COUNTY C-PACE RESOLUTION**

**No. R23-137**

**RESOLUTION CREATING A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM TO PROVIDE THE MEANS OF FINANCING ONE OR MORE ENERGY EFFICIENCY IMPROVEMENT PROJECTS, RENEWABLE ENERGY PROJECTS, WATER EFFICIENCY IMPROVEMENT PROJECTS OR RESILIENCY PROJECTS FOR QUALIFYING COMMERCIAL OR INDUSTRIAL REAL PROPERTY; TOGETHER WITH OTHER MATTERS PROPERLY RELATING THERETO.**

**WHEREAS**, NRS Chapter 271 at Sections 271.6312-6325, as amended by SB 283 (collectively, the “Act”) enables Nevada Counties, without an election, to adopt a resolution whereby the Governing Body of the County specifies the procedure for the creation and administration of a district, which may constitute the entire jurisdictional boundaries of the County, with the purpose of financing one or more Qualifying Improvement Projects with willing owners of Qualifying Commercial or Industrial Real Property (“District”), a program generally known as a “Commercial Property Assessed Clean Energy Program” or “C-PACE Program”; and

**WHEREAS**, the Washoe County Board of County Commissioners (hereinafter the “Board of Commissioners”) hereby finds and determines that the improvements to be made and financed under a C-PACE Program with the County may reasonably be expected to (i) renew and revitalize existing commercial and industrial properties; (ii) enhance the value of both existing and new commercial and industrial properties; (iii) improve the marketability and profitability of such improved properties (iv) generate local construction jobs; (iv) lead to the creation of additional jobs by the businesses which thereby become more profitable; (vi) improve air quality; (vii) and support progress towards the County's goal to encourage green building, reduce climate pollution, and expand the clean energy economy; and (viii) strengthen the local economy, and that accordingly, the adoption of a resolution to enable the County's C-PACE Program is in the public interest; and

**WHEREAS**, the construction or renovation of energy efficient buildings or projects with renewable energy and other energy conservation systems that exceed current building energy code requirements will enhance the tax base of Washoe County and make such buildings more attractive to owners and tenants, and thereby promoting employment and economic growth; and

**WHEREAS**, the Board of County Commissioners finds that creation of a District within the boundaries of the County serves the public purposes of resource conservation, aligns with the County’s strategic priority to reduce greenhouse gas emissions and increases resiliency of the County pursuant to NRS 271.6315(1)(a).

**NOW, THEREFORE, THE WASHOE COUNTY BOARD OF COUNTY COMMISSIONERS DOES HEREBY RESOLVE AS FOLLOWS:**

## SECTION 1 PROGRAM CREATION

1.1 Washoe County, Nevada, a political subdivision of the State of Nevada, hereby creates the Washoe County C-PACE Program as of the Effective Date by adoption of this Resolution.

## SECTION 2

### DEFINITIONS

2.1 Capitalized terms used herein but not otherwise defined have the meanings given such terms in the Act.

2.2 **“Assessment”** and **“Assessment Lien”** means a voluntary lien created by the County against any tract specifically benefited by any Qualified Improvement Project to defray wholly or in part the cost of the project, in an existing structure or new construction, which lien shall be made on a Qualifying Commercial or Industrial Real Property, as secured by a Recorded Notice of Assessment and Assessment Lien, and which shall not be subject to acceleration or extinguishment by the sale of any property on account of the nonpayment of general taxes, and is prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes attached to the tract pursuant to the provisions of NRS 361.450.

2.3 **“Assessment Agreement”** means the voluntary contract, signed by the County and the Property Owner, whereby the Property Owner agrees to an Assessment and Assessment Lien imposed and Recorded on its Tract as security for repayment of Financing received pursuant to a Financing Agreement.

2.4 **“Capital Provider”** means any private entity or the designee, successor or assign of the private entity that provides Financing for a Qualified Improvement Project pursuant to the Act.

2.5 **“County”** means Washoe County, Nevada, a political subdivision of the State of Nevada.

2.6 **“County Program Manager”** means an employee of County designated as the Program Manager appointed to run the Washoe County C-PACE Program and act as liaison with the Program Administrator.

2.7 **“C-PACE”** means Commercial Property Assessed Clean Energy.

2.8 **“C-PACE Assignment”** means a written assignment of the Notice of Assessment and Assessment Lien executed by the County for the benefit of the Qualified Capital provider that provided the financing for the Qualified Improvements Project which shall be Recorded to evidence the County's assignment of the Assessment and Assessment Lien, a form of which C-PACE Assignment is attached to the Program Guide.

2.9 **“Delinquent C-PACE Payment”** means any Installment Payment of the Financing Amount that was not paid by Property Owner when due, which shall include without

limitation, all interest, late fees, and penalties incurred pursuant to the Financing Agreement.

2.10 **“Effective Date”** means December 1, 2023, i.e., the date this Resolution goes into effect.

2.11 **“Energy Efficiency Improvement Project”** means the installation or modification of one or more energy efficiency improvements that decrease or support the decrease of energy consumption or demand for energy through the use of energy efficiency technologies, products or activities and incidentals which are necessary, useful, or desirable for any such improvements and which installation or modification has a useful life of not less than ten (10) years.

2.12 **“Financing”** means the C-PACE Financing or refinancing described in the Financing Agreement, which is financed by the Qualified Capital Provider for one or more Qualified Improvement Projects on Qualifying Commercial or Industrial Real Property.

2.13 **“Financing Agreement”** means the contract pursuant to which a property owner or lessee, as applicable, agrees to repay the capital provider for financing or refinancing a qualified improvement project, including, without limitation, any finance charges, fees, debt servicing, interest, penalties, and any other provision relating to the treatment of prepayment or partial payment, billing, collection and enforcement of the assessment and lien securing the Financing.

2.14 **“Financing Amount”** means the aggregate amount of the Financing, including interest, any finance charges, fees, debt servicing, costs, and penalties as are described in the Financing Agreement.

2.15 **“Financing Term”** means the term of the Financing, as described in the Financing Agreement.

2.16 **“Lender”** means a mortgagee, the beneficiary of a deed of trust or other creditor who holds a mortgage, deed of trust, or other Recorded instrument that encumbers the Tract to secure the Financing as security for the repayment of a loan.

2.17 **“Lender Consent”** means the instrument by which any Lender consents in writing to the creation of an Assessment and Assessment Lien against the Tract to pay all or a portion of the cost of the installation or improvement of a Qualified Improvement Project. Each consent must be Recorded and once Recorded is binding on the Lender as well as their successors or assigns.

2.18 **“Notice of Assessment and Assessment Lien”** means the document executed by the County and Recorded to evidence the Assessment and Assessment Lien, a form of which Notice is attached to the Program Guide.

2.19 **“Program”** means the Washoe County C-PACE Program created by County through adoption of this Resolution consistent with the Act.

2.20 **“Program Administrator”** means the person or entity contracted in writing by the County to assist with the planning and administration of the C-PACE Program.

2.21 **“Program Guide”** means the comprehensive document which sets forth standard forms and establishes appropriate guidelines, specifications, and criteria for the underwriting and approval of a Qualified Improvement Project from time to time published by the Program Administrator and approved by the County Program Manager. The Program Guide is hereby adopted by the County pursuant to NRS 271.6325(2).

2.22 **“Property Owner”** means all the owners of record of a Tract on which a Qualified Improvement Project is installed.

2.23 **“Qualified Capital Provider”** means a Capital Provider approved by the Program Administrator. The term includes any designee, successor, or assign of the entity that provides Financing as the Capital Provider for Qualified Improvement Project.

2.24 **“Qualifying Commercial or Industrial Real Property”** means any real property within the District other than (i) a residential dwelling that contains fewer than five (5) individual dwelling units; or (ii) property financed by a government-guaranteed financing program that prohibits the subordination of the government's interest in the property or otherwise prohibits a contract under the Act and that meets the project eligibility requirements as further defined herein. This term does not include any real property owned by the U.S. Department of Defense pursuant to NRS 271.6315(3).

2.25 **“Qualified Improvement Project”** means one or more of an Energy Efficiency Improvement Project, Water Efficiency Improvement Project, Renewable Energy Project, or Resiliency Project which are permanently affixed to real property in an existing structure or in new construction performed pursuant to the Act, that meet the project eligibility requirements as further defined herein.

2.26 **“Record”** and its derivatives mean to record in the official records of the Office of the County Recorder, Washoe County, Nevada.

2.27 **“Renewable Energy Project”** means any improvement to real property, and facilities and equipment used to generate electricity within the County from renewable energy to offset customer load in whole or in part on the real property, or to support the production of renewable or thermal energy including, without limitation, energy storage, and all appurtenances and incidentals necessary, useful, or desirable for any such improvements, facilities and equipment, and which improvement has a useful life of not less than ten (10) years.

2.28 **“Resiliency Project”** means a qualified improvement to real property, facilities, or equipment with a useful life of not less than ten (10) years that:

1. Increases a building's structural integrity for seismic events;
2. Improves outdoor air quality;

3. Improves wind or fire resistance;
4. Improves stormwater quality or reduces on-site or off-site risk of flash flooding;
5. Improves or enhances the ability of a building to withstand an electrical outage;
6. Reduces or mitigates the urban heat island effect or the effects of extreme heat;
7. Reduces any other environmental hazard identified by the County; or
8. Enhances the surrounding environment in which the real property is located.

2.29 **“Water Efficiency Improvement Project”** means an improvement to real property, facilities or equipment, and all necessary appurtenances and incidentals thereto, with a useful life of not less than ten (10) years that is designed to:

1. Reduce the water consumption of the real property; or,
2. Conserve or remediate water, in whole or in part, on the real property.

### **SECTION 3**

#### **ADMINISTRATION OF THE C-PACE PROGRAM: CREATION AND ADMINISTRATION OF DISTRICT, FINANCING, ELIGIBILITY AND GENERAL INFORMATION**

**3.1 AUTHORIZATION OF A DISTRICT.** The Board of County Commissioners hereby authorizes the creation of a District pursuant to NRS 271.6312(2), the ultimate boundaries which the jurisdictional boundaries of the County, in their entirety as described on Exhibit A attached hereto and incorporated herein by this reference. Pursuant to NRS 271.6315(2)(a) - (d), the Board of County Commissioners hereby excludes from the District, and shall be deemed to have disapproved from inclusion in the District, any Tract unless and until: (a) the Property Owner of the Tract upon which a Qualified Improvement Project will be located enters into an Assessment Agreement with the County pursuant to Section 3; (b) the amount of the Assessment and Assessment Lien that will be placed on the Tract for the Qualified Improvement Project, if used for retrofitting an existing structure, does not exceed 25% of the fair market value of the property assessed; (c) the amount of the Assessment and Assessment Lien that will be placed on the Tract for a Qualified Improvement Project, if used for new construction or a gut rehabilitation, does not exceed 35% of the fair market value of the property assessed; (d) the outstanding amount owed on all Recorded instruments which are liens against the Tract, including the Assessment and Assessment Lien, will not exceed 90% of the estimated fair market value of the property assessed; and any Lender who, as of the date of the Recording of the Notice of Assessment and Assessment Lien, holds a lien on the Tract on which the Qualified Improvement Project will be located, consents in writing to the levy of an Assessment and Assessment Lien against the Tract to secure the repayment of the Financing, which shall be in Recordable form and be binding on the holder of the lien who signs the consent, together with its successors and assigns pursuant to Section 3. Determination of fair market value under this 3.1 shall be determined by a certified appraiser pursuant to guidelines adopted pursuant to NRS 271.6325 in the Program Guide.

**3.2 CREATION OF THE DISTRICT.** The District shall be comprised of Tracts within the boundaries created by Section 3.1 against which there has been Recorded a Notice of

Assessment and Assessment Lien and for which no Release (as defined below) has been Recorded.

**3.3 PARTICIPATION IN THE PROGRAM.** The Program Administrator shall formally implement the Program through the creation of a publicly accessible website through which the public may submit applications for the Program

**3.4 PROGRAM ADMINISTRATION.** The County may enter into a contract with a qualified, third-party Program Administrator to assist County staff in the creation and implementation of the C-PACE program. The County may authorize such Program Administrator to perform various tasks in accordance with the Act and this Resolution. The County may delegate authority to Record documents hereunder to the Program Administrator or to the Qualified Capital Provider. The Program Administrator may:

- A. Develop additional Program requirements, forms, consents, and materials, as approved by the County Program Manager.
- B. Create an application form and approved Property Owner applications.
- C. Approve Qualified Service Companies and Qualified Capital Providers.
- D. Develop the methods to determine Program eligibility requirements including:
  - 1. Loan-to-value and lien-to-value limitations pursuant to NRS 271.6315(2)(b) and (d), inclusive;
  - 2. Insurance requirements;
  - 3. Supplemental sources of Financing; and
  - 4. Additional forms of security.
- E. Conduct market analysis and Program marketing plans.
- F. Develop Program quality assurance and quality control plan.
- G. The Program Administrator may adopt such trade name or names under which to operate as the Program Administrator, which the consent of the County Program Manager, as it may from time-to-time determine.

**3.5 COUNTY AUTHORITY.** The County hereby delegates authority to the County Program Manager and District Attorney to negotiate the forms of the C-PACE documents attached to the Program Guide. The County hereby delegates authority to the County Program Manager to execute documents related to a Financing, including the Assessment Agreement, the Notice of Assessment and Assessment Lien and the C-PACE Assignment. The Program Administrator, in collaboration with the Board of County Commissioners, County Program Manager, and District Attorney, may from time-to-time amend the Program Guide.

**3.6 SOURCES OF FINANCING.**

- A. Except as provided in Section 3.6(8), Qualified Improvement Projects must be financed or refinanced only through an Assessment and Assessment Lien on the real property that secures the Financing obtained from a Qualified Capital Provider pursuant to a Financing Agreement.
- B. In addition to, but not in lieu of the Financing pursuant to a Financing Agreement, a Qualified Improvement Project may be financed or refinanced through an assessment on the real property to secure bonds issued pursuant to NRS 271.475. Any bond or

interim warrant issued for Qualified Improvement Projects may not be used in furtherance or support of a Financing Amount under a Financing Agreement with a Qualified Capital Provider, must not be secured by a pledge of the general credit or taxing power of the County or by the surplus and deficiency fund established pursuant to NRS 271.428, and shall be supplemental to a direct financing by a Capital Provider pursuant to a Financing Agreement described in Section 3.6(C) below.

- C. In a Financing through a Qualified Capital provider:
- i. The County shall assign the Assessment and Assessment Lien to the Qualified Capital Provider pursuant to the form of C-PACE Assignment attached to the Program Guide;
  - ii. The Qualified Capital Provider is solely responsible for the billing, collection, and the enforcement of the Assessment and Assessment Lien; and
  - iii. A Delinquent C-PACE Payment will result in the interest and penalties set forth in the Financing Agreement, and enforcement of a Delinquent C- PACE Payment shall be by judicial foreclosure in the manner of a mortgage.

**3.7 ASSESSMENT AGREEMENT AND FINANCING AGREEMENTS.** Each Property Owner of a Qualifying Commercial or Industrial Real Property or part thereof wishing to be an active and voluntary participant in the Program shall enter into a written voluntary Assessment Agreement with the County, whereby the Property Owner consents in writing to the specific amount of the Assessment and Assessment Lien that will be imposed for the Qualified Improvement Project to secure repayment of the Financing provided by the Qualified Capital Provider for the project and to the Recordation of the Notice of Assessment and Assessment Lien against its real property. Such Property Owner, or its lessee, as applicable, shall enter into a Financing Agreement with a Qualified Capital Provider that sets forth the applicable terms to repay the Financing Amount for a Qualified Improvement Project. A Notice of Assessment and Assessment Lien with the property legal description and Assessment Agreement attached shall be Recorded.

**3.8 WRITTEN CONSENT OF LENDER.** Each Lender on which Qualified Improvement Project will be located shall provide an executed and notarized Lender Consent in Recordable form. The Lender Consent is binding on the Lender who signs the consent. Each Lender Consent provided, and each amendment thereto must be Recorded, and once Recorded, is binding on the Lender who signed the consent and any other person or Lender who holds any interest in the Tract to which the Lender Consent relates and such Lender's successors, and assigns.

The Lender Consent only applies to person or entities meeting the definition of "Lender" herein as of the date of Recordation of the Notice of Assessment and Assessment Lien.

## **SECTION 4**

### **ADMINISTRATION OF THE C-PACE PROGRAM: PROJECT ELIGIBILITY**

**4.1 APPLICATION PROCESSING.** Within the District created, an interested Property

Owner, a lessee, or a representative of the Property Owner, may submit an application to the County or its Program Administrator. The Program Administrator will review the application material and determine whether the real property and project meet the C-PACE Program eligibility requirements contained in the Act, this Resolution, and in the Program Guide. Project applications from interested Property Owners or lessees will be processed on a first come, first serve basis on its own merits and in accordance with the Act, this resolution and the Program Guide and shall only apply to the Tract set forth in the application.

**4.2 SIZE THRESHOLDS.** There is no minimum or maximum aggregate dollar amount that may be financed under the Program.

**4.3 ELIGIBLE PROJECT.** A Qualified Improvement Project located on a Qualifying Commercial or Industrial Real Property is eligible for the Program provided the required audit or feasibility study as described in the Program Guide has been reviewed by the Program Administrator and determined to be feasible with respect to its findings, savings, benefits, and compliance with any provisions within the Act, this Resolution or Program Guide without further action required by the Board of County Commissioners.

**4.4 PROJECT ELIGIBILITY NOTIFICATION.** The Program Administrator shall prepare and deliver to the Property Owner a project eligibility notification.

## **SECTION 5**

### **ADMINISTRATION OF THE C-PACE PROGRAM: PROJECT FINANCING**

**5.1 ROLE OF COUNTY.** Neither the County nor any authority or other governmental entity whose board is appointed by the County shall lend its credit under this C-PACE Program.

Unless otherwise specified in the Program Guide, the role of County shall be limited to:

- A. Executing the written voluntary Assessment Agreement with the Property Owner.
- B. Executing and Recording the Notice of Assessment and Assessment Lien for the property; and
- C. Executing the C-PACE Assignment to the Qualified Capital Provider that provides the Financing of the Qualified Improvement Project.

**5.2 FINANCING AMOUNTS; FEES AND COSTS.** As described in Section 3.6 Qualified Capital Providers may finance projects under the Program. The Financing Agreement, entered into by a Property Owner or its lessee, as applicable, and Qualified Capital Provider for a Qualified Improvement Project, will specify that aggregate Financing Amount, which shall comprise the total cost of the Qualified Improvement Project(s), as well as interest on that amount during the Financing Term and any other C-PACE Program costs and closing fees. The interest rate of a Financing shall be determined by mutual agreement of Property Owner and Qualified Capital Provider. The amount of a C-PACE Financing shall be fully amortized in the C-PACE Installment Payments over the Financing Term as agreed by the



Property Owner or lessee, as applicable and Qualified Capital Provider. The amount of Financing shall be fully amortized in the Installment Payments over the Financing Term as agreed by the Property Owner or lessee, as applicable, and qualified Capital Provider. Neither the County nor the County Program Manager shall be involved in the negotiation of the Financing Agreement.

**5.3 FINANCING TERM.** The Financing Term shall not exceed the useful life of the Qualified Improvement Project or, if the Qualified Improvement Project includes more than one improvement, the weighted average expected life of all Qualified Improvement Projects financed by the Financing Agreement or bond issuance.

**5.4 ADMINISTRATIVE FEES.** The County may establish administrative fees to be applied to each financed Qualified Improvement Project. The C-PACE Program will be self-financed, and the Program fees charged to participating Property Owners are designed to cover the start-up and recurring costs to administer the Program. Each financed project administration fee, as approved by the County, and published in the Program Guide shall be disbursed to the Program Administrator at the closing of Financing by the Qualified Capital Provider.

**5.5 FORM OF ASSESSMENT AND FINANCING AGREEMENT.** The Assessment Agreement executed by the Property Owner and the County shall be in substantially the form attached to the Program Guide.

## SECTION 6

### ADMINISTRATION OF THE C-PACE PROGRAM: CLOSING AND LIEN RECORDING

**6.1 REPAYMENT MECHANISM.** Financings granted under the C-PACE Program will be repaid by collection of installment payments of the Financing Amount by the Qualified Capital Provider as described in Section 7.

**6.2 NOTIFICATION OF CLOSING.** Upon closing of Financing, the Program Administrator will promptly provide notice thereof to the County Program Manager, which notice shall include a statement of Financing Amount, executed and notarized Lender Consents, if any, and a copy of the Financing Agreement executed by all parties thereto. The County Program Manager shall provide such documentation to the District Attorney and County Clerk.

**6.3 PROMPT LIEN RECORDING.** At the closing of the Financing, the Notice of Assessment and Assessment Lien, with the Assessment Agreement and legal description of the Tract attached as an exhibit, and then the C-PACE Assignment, shall be Recorded in such order. Any amendments thereto must also be Recorded. Prior to closing the Financing, the Property Owner must submit to the Program Administrator and Qualified Capital Provider evidence that: (i) the Property Owner is current on payments of all loans secured by a mortgage or deed to trust lien on the property and on Real Estate Tax payment to the County, (ii) Property Owner and lessee, as applicable are not insolvent or subject to bankruptcy proceedings, and (iii) Property Owner's title to the Tract is not in dispute.

Following Recordation of the C-PACE Assignment, installment payments of the Financing Amount shall be billed and shall be collected and enforced by the Qualified Capital Provider or its designee.

## SECTION 7

### **ADMINISTRATION OF THE C-PACE PROGRAM: BILLING, REPAYMENT, REMITTANCE, DELINQUENCIES, AND TRANSFERS**

**7.1 APPLICABILITY.** The Program Guide may specify any necessary or applicable procedures with respect to billing, repayment, remittance, delinquencies, or transfers, and the role of the County, Program Administrator, and/or any Qualified Provider.

**7.2 BILLING, REPAYMENT, DISBURSEMENT, REMITTANCE.** Billing, collection, and repayment of the Financing Amount are the sole responsibility of the Qualified Capital Provider in amounts and at such time as described in the Financing Agreement.

**7.3 DELINQUENCIES.** Only the current C-PACE installment payment and any Delinquent C-PACE Payments shall be prior and superior to all liens, claims, encumbrances, and titles other than the liens and assessments of general taxes pursuant to NRS 361.450. Delinquent C-PACE Payments shall (i) accrue penalties and interest in accordance with the Financing Agreement, and (ii) be enforced in accordance with the Financing Agreement. Foreclosure is the sole responsibility of the Qualified Capital Provider and shall be performed in the manner of a judicial foreclosure of a mortgage.

**7.4 TRANSFERS.** The Property Owner subject to an Assessment and Assessment Lien shall assume the obligation to repay all remaining, unpaid C-PACE installment payment due under the Financing Agreement (according to the installment payment schedule,) whether the transfer of ownership was voluntary or involuntary. Only the current C-PACE installment payment and any Delinquent C-PACE Payments, together with any costs of collection under the Financing Agreement, shall be payable at the settlement of a foreclosure sale.

C-PACE loans may be transferred, assigned, or sold by a Qualified Capital Provider at any time during the Financing Term without consent from Property Owner, County, or any other party, provided that Qualified Capital Provider shall Record a C-PACE Assignment. Recordation of such assignment shall constitute an assumption by the successor Capital Provider of the rights and obligations contained in the Financing Agreement and the Assessment Agreement, as assigned by the County.

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The adoption of the foregoing Resolution was moved by Hill,  
seconded by Andriola and adopted on this 17 day of October by the  
following vote of the Board of County Commissioners of Washoe County.

AYES: Hill, Andriola, Garcia

NAYS: Herman, Clark

[Signature]  
\_\_\_\_\_, Chairperson  
Washoe County Board of County Commissioners

ATTEST:

[Signature]  
\_\_\_\_\_, Clerk

