

RESOLUTION NO. 4404

(Create the City of Henderson Commercial Property Assessed Clean Energy Program; and Providing the Means of Financing Energy Efficiency Improvement Projects or Renewable Energy Projects)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, CREATING THE CITY OF HENDERSON COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM; TO PROVIDE THE MEANS OF FINANCING ONE OR MORE ENERGY EFFICIENCY IMPROVEMENT PROJECTS OR RENEWABLE ENERGY PROJECTS FOR COMMERCIAL OR INDUSTRIAL PROPERTY.

- WHEREAS, Chapter 271 of the Nevada Revised Statutes (“NRS”) enables a Nevada local government, without an election, to adopt a resolution whereby the governing body of the municipality specifies the procedure for the creation and administration of a district to finance one or more Energy Improvement Projects or Renewable Energy Projects with willing owners of qualifying existing and new commercial or industrial real property; and
- WHEREAS, the City of Henderson (“City”) recognizes that environmental sustainability improves the environment, reduces energy consumption, expands employment opportunities, reduces total utility costs for building owners and promotes investment in the City and continued investment in community energy programs will enhance the City’s environmental sustainability; and
- WHEREAS, the City has numerous existing commercial and industrial buildings with many years of remaining life; however, the energy efficiency of those commercial and industrial buildings often do not meet current energy efficiency standards, lack renewable energy and other energy conservation systems and are therefore less desirable for owners and tenants; and
- WHEREAS, the construction of new energy efficient buildings with renewable energy and other energy conservation systems that exceed current building energy code requirements will enhance the tax base of the City and make such buildings more attractive to owners and tenants, thereby promoting employment and economic growth in the City; and
- WHEREAS, the financing under such a program would be secured by the placement of a voluntary Assessment against the participating commercial or industrial real property, recorded with the Clark County Recorder’s Office by the Program Administrator, the Installment Payments of which Assessment will be due and payable from the Property Owner in the amounts and at the times as are described in the Assessment and Financing Agreement and the Assessment lien will be on par with the lien of Real Estate Taxes and superior to all other liens; shall run with the title to the commercial or industrial real property; and shall not be subject to extinguishment by the sale of the commercial or industrial real property on account of the non-payment of Real Estate Taxes, all of which gives rise to such program generally known as a “Commercial Property Assessed Clean Energy Program” or “C-PACE Program”; and

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

WHEREAS, the Henderson City Council (the "City Council") hereby finds and determines that the improvements to be made and financed under a C-PACE Program in the City 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 construction jobs in the City; (v) lead to the creation of additional jobs by the businesses which thereby become more profitable; (vi) improve the air quality in the City; (vii) and support progress towards the City's goals for environmental sustainability, and (viii) strengthen the economy of the City, and that accordingly, the adoption of a resolution to create a C-PACE Program for the City is in the public interest; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Henderson, Nevada, that:

SECTION 1. City hereby creates the "Henderson C-PACE Program".

SECTION 2. The following definitions shall apply to the Henderson C-PACE Program created herein:

2.1. "Assessment" or "Assess" means a voluntary assessment, or the levy thereof, against any tract specially benefited by any Energy Efficiency Improvement Project or Renewable Energy Project, to defray wholly or in part the cost of the project, which Assessment shall be made on a Qualifying Commercial or Industrial Real Property, as may be determined by City, but in no event shall any Assessment exceed the Estimated Maximum Benefit to the tract assessed or its reasonable market value, as determined by City or its Program Administrator.

2.2. "Assessment and Financing Agreement" means a written agreement, between a Property Owner, Capital Provider and City, setting forth the applicable terms of and arrangements for the C-PACE Financing for an eligible Energy Efficiency Improvement Project and/or a Renewable Energy Project.

2.3. "City" means the City of Henderson, Nevada, a Nevada municipal corporation and political subdivision of the State of Nevada.

2.4. "City Program Manager" means an employee of City designated as the Program Manager appointed to run the C-PACE Program, and act as liaison with the Program Administrator.

2.5. "C-PACE" means Commercial Property Assessed Clean Energy.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

2.6. "C-PACE Amendment" means a Certificate of Amendment to Levy and Lien of C-PACE Assessment, executed by Qualified Capital Provider without consent from Property Owner, as permitted in the C-PACE Assessment and Financing Agreement, which C-PACE Amendment shall be recorded in the official records of the Clark County Recorder's Office to evidence each amendment to the C-PACE Assessment and the C-PACE Lien, a form of which C-PACE Amendment is attached to the C-PACE Assessment and Financing Agreement.

2.7. "C-PACE Assignment" means a written assignment executed by a Qualified Capital Provider from time to time without consent from Property Owner, which shall be recorded in the official records of the Clark County Recorder's Office by the City Clerk, to evidence Qualified Capital Provider's assignment of the C-PACE Financing and C-PACE Lien, a form of which C-PACE Assignment is attached to the C PACE Assessment and Financing Agreement.

2.8. "C-PACE Certificate" means a Certificate of Levy and Lien of C-PACE Assessment, which shall (i) be executed by Property Owner, Qualified Capital Provider, and the City; (ii) include an Installment Payments schedule; and (iii) be recorded in the official records of the Clark County Recorder's Office by the City, to evidence the C-PACE Lien, a form of which C-PACE Certificate is attached to the C-PACE Assessment and Financing Agreement.

2.9. "C-PACE Lien" means the voluntary Assessment lien levied against a Qualifying Commercial or Industrial Real Property as security for the C-PACE Financing, which (A) is of equal priority with the Real Estate Tax lien and all other special Assessment liens recorded in accordance with NRS Chapter 271; and (B) is senior to (i) all previously recorded senior liens, provided a Lender Consent is recorded for each such senior lien; (ii) shall run with title to the property and shall not be extinguished by a foreclosure; and (iii) is evidenced by the C-PACE Certificate, as may be amended and assigned from time to time in accordance with this Resolution and the C-PACE Assessment and Financing Agreement.

2.10. "Delinquent C-PACE Payment" means any C-PACE Installment Payment that was not paid by Property Owner when due, which shall include without limitation, all interest, late fees, and penalties incurred pursuant to the C-PACE Assessment and Financing Agreement.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

2.11. "Energy Audit" means a formal evaluation of the energy consumption of a permanent building or any structural improvement to Qualifying Commercial or Industrial Real Property that is consistent with (i) the requirements of ASTM International Standard E2797, "Standard Practice for Building Energy Performance Assessment for a Building Involved in a Real Estate Transaction"; or (ii) the ASHRAE Level 2 or 3 guidelines for energy audits or any comparable energy assessment guidelines, as applicable. For a Renewable Energy Project, the project must be determined to be feasible through a written feasibility study conducted by a Qualified Service Company.

2.12. "Energy Efficiency Improvement Project" means the installation or modification of one or more energy efficiency improvements and incidentals which are necessary, useful or desirable for any such improvements and which installation or modification has a useful life, as estimated by the Program Administrator based on industry best practice, of not less than ten (10) years.

2.13. "Estimated Maximum Benefit" means the Estimated Maximum Benefit to the tract from the installation of a qualifying Energy Efficiency Improvement Project and/or a Renewable Energy Project, and may not exceed the market value of the tract, e.g. the City's assessed value or appraised value of the tract. Estimated Maximum Benefit is the ratio of the estimated average annual savings from the installation or improvement over the property capitalization rate as determined by City or its Program Administrator.

2.14. "Financing" means the C-PACE Financing described in the Assessment and Financing Agreement financed by the Qualified Capital Provider.

2.15. "Financing Amount" means the aggregate amount of the Financing, including interest, fees, and costs as are described in the Assessment and Financing Agreement.

2.16. "Financing Term" means the term of the Financing, as described in the Assessment and Financing Agreement, which shall not exceed the weighted average effective useful life of the qualifying Energy Efficiency Improvement Project and/or Renewable Energy Project improvements as determined by the Program Administrator.

2.17. "Installment Payment" means the periodic repayments of the C-PACE Financing Amount, due from the Property Owner in the amounts and at the times, and payable to such entities, as are described in the Assessment and Financing Agreement.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

2.18. "Lender" means a mortgagee, the beneficiary of a deed of trust or other creditor who holds a mortgage, deed of trust, or other instrument that encumbers a tract as security for the repayment of a loan.

2.19. "Lender Consent" means any Lender who holds a lien on any tract on which a qualifying Energy Efficiency Improvement Project and/or a Renewable Energy Project will be located, and who must consent in writing to the levy of a C-PACE Assessment against the tract to pay all or a portion of the cost of the installation or improvement. Such Lender is entitled, within thirty (30) days after providing consent, to offer a loan to the owner of the tract as the primary Lender of the new levy of a C-PACE Assessment. Each consent must be recorded by the City in the Clark County Recorder's Office and once recorded, is binding on the Lender who signed the consent and any other person who holds any interest in the tract to which the consent relates and who signed the consent.

2.20. "Program" means the Henderson C-PACE Program created by City through adoption of this resolution consistent with NRS 271.6312 to 271.6325, inclusive.

2.21. "Program Administrator" means the person or entity contracted in writing by City to assist with the planning and administration of the C-PACE Program.

2.22. "Program Guide" means the detailed description of Program requirements, including the types and examples of Eligible Improvements, from time to time published by the Program Administrator and approved by the City Program Manager.

2.23. "Property Owner" means the person or entity that holds title to a Qualifying Commercial or Industrial Real Property, together with their successors and permitted assigns, as further defined in the Assessment and Financing Agreement.

2.24. "Qualified Capital Provider" means any private source of project Financing, including but not limited to private equity investors, specialty banks, banks, and credit unions that have been approved by the Program Administrator as Qualified Capital Providers.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

2.25. "Qualifying Commercial" or "Industrial Real Property" means any real property located within the corporate limits of City, regardless of whether such real estate is subject to taxation by City, other than (i) a residential dwelling that contains fewer than five 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 NRS 271.6312 to 271.6325, inclusive, and that meets the project eligibility requirements as further defined herein.

2.26. "Qualified Service Company" has the meaning ascribed to it in NRS 333A.060, to wit: a person with a record of established projects or a person with demonstrated technical, operational, financial, and managerial capabilities to design and carry out operating cost-savings measures and other similar building improvements, and who has the ability to secure necessary financial measures to ensure related guarantees for operating cost savings, as applicable. Such Qualified Service Company shall be validly licensed or otherwise permitted under applicable state and City laws to provide such services, and be in good standing with the Nevada State Contractors Board.

2.27. "Real Estate Tax" means the local tax on real estate which the City levies pursuant to the City of Henderson City Charter, Article VIII – Revenue, Section 8.010.

2.28. "Renewable Energy Project" means any improvement to real property, and facilities and equipment used to generate electricity from renewable energy to offset customer load in whole or in part on the qualifying real property, and all appurtenances and incidentals which are necessary, useful or desirable for any such improvements, facilities and equipment, and which improvement has a useful life, as estimated by the Program Administrator based on industry best practice, of not less than ten (10) years.

2.29. "Savings-to-Investment Ratio" means the total anticipated energy cost savings, as calculated in good faith by the Program Administrator, over the effective useful life of the qualified Energy Efficiency Improvement Project or Renewable Energy Project improvement(s), divided by the Financing Amount.

**SECTION 3. ADMINISTRATION OF THE C-PACE PROGRAM: CREATION OF DISTRICTS AND GENERAL ADMINISTRATION.**

3.1 **CREATION OF DISTRICT.** The City Council may create a district and add qualifying commercial or industrial properties to the district by adoption of a resolution for the Henderson C-PACE Program as follows:

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

A. The geographic area of a district shall be within the corporate boundaries of City, as they may be amended from time to time. Each district shall consist of Qualifying Commercial or Industrial Real Properties with approved applications and consents for Energy Efficiency Improvement Projects or Renewable Energy Projects as recommended by the Program Administrator for adoption by the City Council. Each resolution adding qualifying properties into a district shall include an exhibit by reference that includes a description of the property or properties to be assessed, the types of improvements or installations to be financed for each property, and the estimated maximum benefits stated in the consent for each property.

B. A district will only consist of consenting and active Property Owner participants in the Program. Any Qualifying Commercial or Industrial Real Property or part thereof that enters into the Program will automatically exit the Program once their final Installment Payment is made to terminate the Financing associated with the recorded C-PACE Lien.

C. Each Property Owner of a Qualifying Commercial or Industrial Real Property or part thereof that is an active and voluntary participant in the Program will have a C-PACE Lien, and property legal description recorded at the Clark County Recorder's Office. Such Property Owner shall enter into an Assessment and Financing Agreement with a Qualified Capital Provider that sets forth the applicable terms to repay the Financing Amount for an eligible Energy Efficiency Improvement Project or a Renewable Energy Project.

3.2 PROGRAM ADMINISTRATION. City may enter into a contract with a qualified, third-party Program Administrator to assist City staff in the creation and implementation of the C-PACE Program. The City may authorize such Program Administrator to perform various tasks in accordance with NRS 271.6312 to 271.6325, inclusive, and this Resolution, including, but not limited to:

A. Develop Program requirements, forms, consents, and materials to be published in a Program Guide, as approved by the City.

B. Create an application form and approve 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;
- (2). Insurance requirements;
- (3). Sources of Financing; and
- (4). Additional forms of security.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

E. Recording any documents necessary for the creation of a district and/or a C-PACE Lien.

F. Conduct market analysis and Program marketing plans.

G. Develop Program quality assurance and quality control plan.

H. The Program Administrator may adopt such trade name or names under which to operate as the Program Administrator, with the consent of the City Program Manager, may from time to time determine. The C-PACE Program shall be available to Qualifying Commercial or Industrial real property owners throughout the City so long as the property owner, type of building and proposed Energy Efficiency Improvement Projects or Renewable Energy Projects all qualify for the C-PACE Program pursuant to NRS 271.6312.

3.3 PROGRAM ELIGIBILITY. The total contract price of any eligible Energy Efficiency Improvement Project or Renewable Energy Project must not exceed eighty percent (80%) of the Estimated Maximum Benefit for the tract as stated in the consent, as it may be amended from time to time, unless the owner of the property to be assessed (i) agrees to pay and pays, or causes another party to pay, the difference between eighty percent (80%) of the Estimated Maximum Benefit and the total contract price from a source other than financing provided pursuant NRS 271.6312 to 271.6325, inclusive; and (ii) agrees in writing that the improvement or installation will in fact benefit the tract by an amount at least equal to the sum of the Estimated Maximum Benefit stated in the consent and the amount to be paid from a source other than the Qualified Capital Provider financing the project. The outstanding amount owed on all recorded instruments which are liens against any tract included in the district shall not exceed ninety percent (90%) of the estimated fair market value of the property assessed, as defined by the City, taking into account the imposition of the liens for Assessments pursuant to NRS 271.6312 to 271.6325, inclusive, and the additional value added to the tract by a project financed pursuant to NRS 271.6312 to 271.6325, inclusive.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

3.4 WRITTEN CONSENT OF PROGRAM PARTICIPANTS.

A. Property Owner. Within each district, each Property Owner of a Qualifying Commercial or Industrial Real Property on which an eligible Energy Efficiency Improvement Project and/or a Renewable Energy Project is located shall complete a written consent that verifies the location of the property is within the City, and consents to the levy of an Assessment against the tract for the purposes of paying all or a portion of the cost of an Energy Efficiency Improvement Project and/or a Renewable Energy Project in an amount up to the Estimated Maximum Benefit to the tract from the installation or improvement. The Estimated Maximum Benefit may not exceed the market value of the tract as determined by the City or its Program Administrator. Each such consent shall be accompanied by a signed copy of the contract between the Property Owner and Qualified Service Company describing the installation or improvement identified in the consent.

B. Lender. Each Lender who holds a lien on any tract on which an Energy Efficiency Improvement Project or Renewable Energy Project will be located shall consent in writing to the levy of an Assessment against the tract to pay all or a portion of the cost of the installation or improvement. A signed consent must be in a recordable form and is binding on the holder of a lien who signs the consent. Such Lender is entitled, within thirty (30) days after providing written consent, to offer a loan to the Property Owner of the tract as the primary Lender on the new levy of an Assessment. Each consent provided and each amendment thereto must be recorded by the City with the Clark County Recorder's Office, and, once recorded, is binding on the Property Owner who signed the consent and any other person or Lender who holds any interest in the tract to which the consent relates and who signed the consent.

3.5. SPECIAL REVENUE FUND. The City Council may create, by resolution, a special revenue fund known as the "Henderson C-PACE Program Special Revenue Fund" For such Fund, the City Council may authorize:

A. Revenue or transfers from City's General Fund, bond proceeds issued for a created district, special assessment proceeds, interest, program fees, grants, rebates, or donations.

B. The expenditure of revenues to:

(1). Finance qualifying Energy Efficiency Improvement Projects or a Renewable Energy Projects on Qualifying Commercial or Industrial Real Property properties within a district, and the completion of energy audits, engineering or architectural work, supplies, equipment, workforce development, and training;

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

(2). Fund program operations, marketing, supplies, or administrative costs of the Program;

(3). Fund the costs of a bond issuance, interim warrant, other financing mechanisms, or incidental costs;

(4). Fund a loan loss reserve fund; and

(5). Accumulate earned interest on deposited funds or revenues of a reserve.

3.6. SOURCES OF FINANCING.

A. As described in Section 3.5, City may authorize the issuance of a bond to pay or reimburse the cost of eligible Energy Efficiency Improvement Projects or Renewable Energy Projects from the Henderson C-PACE Program Special Revenue Fund. Any bond or interim warrant issued for an eligible project must not be secured by a pledge of the general credit or taxing power of the City or by the surplus and deficiency fund established pursuant to NRS 271.428.

B. In lieu of issuing Assessment bonds to finance C-PACE eligible projects, City may authorize private Qualified Capital Providers to finance eligible projects. Such private sources of C-PACE Financing may include, but are not limited to, private equity investors, specialty banks, licensed financial institutions, and credit unions. The City shall not be liable for the repayment of any amounts due as a result of financing provided by any Qualified Capital Providers.

SECTION 4. ADMINISTRATION OF THE C-PACE PROGRAM: PROJECT ELIGIBILITY.

4.1. APPLICATION PROCESSING. An interested Property Owner, or a representative of the Property Owner, may submit an application to the City or its Program Administrator. The Program Administrator will review the application material and determine whether the Property Owner and project meet the C-PACE Program eligibility requirements contained in this Resolution and in the Program Guide. Project applications from interested Property Owners will be processed on a first come, first serve basis in accordance with the Program Guide.

4.2. SIZE THRESHOLDS. There is no minimum or maximum aggregate dollar amount which may be financed.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

4.3. ELIGIBLE PROJECT. An Energy Efficiency Improvement Project or Renewable Energy Project located on a Qualifying Commercial or Industrial Real Property is eligible provided it meets the following requirements:

A. For an Energy Efficiency Improvement Project, the project must be determined to be appropriate by the Program Administrator through an Energy Audit conducted by a Qualified Service Company. A project may be determined to be appropriate if:

(1). The Energy Audit includes a summary of recommendations, which for each recommendation must include existing and expected consumption and expected energy savings expressed in British thermal units, kilowatt-hours, and kilowatts, the expected annual energy savings, the cost, the payback period in years, the expected life cycle in years and the percentage of savings, as applicable; and

(2). The expected energy savings from the project exceeds the investment costs of the project, i.e. the Savings-to-Investment Ratio (SIR) is greater than one.

B. For a Renewable Energy Project, the project must be determined to be feasible by the Program Administrator through a written feasibility study conducted by a Qualified Service Company.

4.4. PROJECT ELIGIBILITY NOTIFICATION. The Program Administrator shall prepare and deliver to the Property Owner a project eligibility notification that includes the project's estimated Savings-to-Investment Ratio.

SECTION 5. ADMINISTRATION OF THE C-PACE PROGRAM: PROJECT FINANCING.

5.1. CITY'S OBLIGATIONS. Neither City nor any authority or other governmental entity whose board is appointed by City shall lend its credit to a Property Owner under this C-PACE Program. Except for oversight duties set forth in this Resolution, the role of City shall be limited to (i) levying and assessing the C-PACE Assessments and C-PACE Liens as set forth in this Resolution; (ii) facilitating the repayment of the C-PACE Financings by authorizing its Program Administrator to facilitate billing, collecting and distributing each C-PACE Installment Payment in accordance with the C-PACE Assessment and Financing Agreement; and (iii) enforcing the timely repayment of the C-PACE Financings in the same manner as delinquent Real Estate Taxes are enforced, in accordance with the C-PACE Assessment and Financing Agreement, any applicable City ordinances, which enforcement action may include, without limitation and by way of example, conducting a tax foreclosure sale of the property by public auction.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

5.2. FINANCING AMOUNTS; FEES AND COSTS. As described in Section 3.6, City may authorize private Qualified Capital Providers to finance eligible projects. The Assessment and Financing Agreement, entered into by a Property Owner and Qualified Capital Provider for an eligible project, will specify that project's aggregate Financing Amount, which shall comprise the cost of the eligible improvements, 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 C-PACE 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 and Qualified Capital Provider.

5.3 FINANCING TERM. The Financing Term shall not exceed the weighted average effective useful life of the qualifying Energy Efficiency Project improvements and/or Renewable Energy Project improvements as determined by the Program Administrator.

5.4. ALLOCATION OF CERTAIN FEES. City shall be authorized to establish an administration fee to be applied to each financed project. The C-PACE Program will be self-financed, and the Program fees charged to participating Property Owners will be designed to cover the start-up and recurring costs to administer the Program. Each financed project administration fee, as approved by the City, and published in the Program Guide shall be disbursed at the closing of project Financing by the Qualified Capital Provider to the Program Administrator.

5.5. SERVICING FEE. City may authorize the establishment of a recurring servicing fee that will be included in each Property Owner Installment Payment during a Financing Term. This servicing fee will be added to the Property Owner's Installment Payment and collected by the Program Administrator or its designee over the Financing Term.

5.6. FORM OF ASSESSMENT AND FINANCING AGREEMENT. The Assessment and Financing Agreement shall be in substantially the form found in the draft Assessment and Financing Agreement, as provided by the City.

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 a special Assessment by the Program Administrator or its designee and its remittance and allocation as described in Section 7.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

6.2. NOTIFICATION OF CLOSING. Upon closing of an eligible project Financing, the Program Administrator will promptly provide notice thereof to the City Program Manager, which notice shall include a statement of the Financing Amount, evidence of subordination of pre-existing liens, if any, and a copy of the Assessment and Financing Agreement executed by all parties thereto.

6.3. PROMPT LIEN RECORDING. Upon receipt of notice of the closing of an eligible project Financing from Program Administrator, the City shall promptly record the Assessment lien in the official records of the Clark County Recorder's Office. Such C-PACE Assessment Lien shall have the same priority status as a Real Estate Tax Lien. Prior to the recording of any Assessment lien, 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 of trust lien on the property and on Real Estate Tax payments to the City, (ii) Property Owner is not insolvent or subject to bankruptcy proceedings, and (iii) Property Owner's title to the eligible property is not in dispute. Thereafter, the C-PACE Installment Assessment Payments shall be billed and shall be collected by the Program Administrator or its designee.

SECTION 7. ADMINISTRATION OF THE C-PACE PROGRAM: BILLING, REPAYMENT, REMITTANCE, DELINQUENCIES, AND TRANSFERS.

7.1. BILLING AND REPAYMENT. At a frequency as detailed in the Assessment and Financing Agreement, the Program Administrator or its designee will send billing data, for each project to facilitate collection of Installment Payments. The Property Owner shall make C-PACE Financing Installment Payments, in such amounts and at such times as are described in the Assessment and Financing Agreement.

7.2. DISBURSEMENT; REMITTANCE. City's obligation to remit the C-PACE Installment Payments to Qualified Capital Provider shall be a limited obligation, only payable if and when funds from the C-PACE Installments Payments are received by the Program Administrator, or the Program Administrator's designee, after deducting approved Servicing Fee authorized under Section 5.5. No later than fourteen days after a C-PACE Installment Payment has been received by the Program Administrator, or the Program Administrator's designee, such party shall process, allocate among and remit the C-PACE Installment Payment to the Qualified Capital Provider, and such other persons or entities who are entitled to receive such allocation under the Assessment and Financing Agreement, in accordance with the terms of the C-PACE Assessment and Financing Agreement.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

7.3. DELINQUENCIES. Only the current C-PACE Installment Payment and any Delinquent C-PACE Payments shall constitute a first lien on the property having equal priority with the City Real Estate Taxes. Delinquent C-PACE Payments shall (i) accrue penalties and interest in accordance with the C-PACE Assessment and Financing Agreement, and (ii) be enforced in accordance with the Assessment and Financing Agreement, any applicable City ordinances, which enforcement action may include conducting a tax foreclosure sale of the property by public auction. C-PACE Installment Payments and Delinquent C-PACE Payments shall be levied, collected and enforced by City in the same manner as delinquent Real Estate Taxes are levied, collected and enforced. In addition to the C-PACE Installment Payments and Delinquent C-PACE Payments due to Qualified Capital Provider, City shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and costs, in the same manner as in a suit to collect delinquent Real Estate Taxes, and may charge interest and penalties for Delinquent C-PACE Payments in the same manner as delinquent Real Estate Taxes. All collection and enforcement costs, expenses, interest and penalties incurred by Qualified Capital Provider and City shall (i) be added to the Delinquent C-PACE Payments being collected, (ii) become part of the aggregate amount due in any suit for collection, (iii) be added to the C-PACE Assessment, and (iv) be secured by the C-PACE Lien.

7.4. TRANSFERS. The Property owner subject to a C-PACE Lien shall assume the obligation to repay all remaining, unpaid C-PACE Installment Payments due on the C-PACE Assessment (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, shall be payable at the settlement of a C-PACE Property sale, unless otherwise agreed by the parties. C-PACE Loans may be transferred, assigned or sold by a Qualified Capital Provider at any time during the C-PACE Financing Term without consent from Property Owner, City, or any other party; provided that Qualified Capital Provider shall (i) record a C-PACE Assignment in the Clark County Recorder's Office, and (ii) deliver a copy of the recorded C-PACE Assignment to City and Program Administrator. City will not be obligated to remit C-PACE Installment Payments to a new Qualified Capital Provider unless a recorded copy of the C-PACE Assignment has been provided to City at least fourteen (14) days before the next due date for the C-PACE Installment Payment. Recordation of the C-PACE Assignment shall constitute an assumption by the new Qualified Capital Provider of the C-PACE rights and obligations contained in the C-PACE Assessment and Financing Agreement.

SECTION 8. City staff may take any other action necessary to implement this resolution as authorized by NRS Chapter 271.

Create the City of Henderson Commercial Property Assessed Clean Energy Program;  
and Providing the Means of Financing Energy Efficiency Improvement Projects or  
Renewable Energy Projects

PASSED, ADOPTED, AND APPROVED THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2020, BY THE  
FOLLOWING ROLL-CALL VOTE OF COUNCIL.

Those voting aye:

John F. Marz, Mayor Pro Tem

Councilmembers:

Michelle Romero

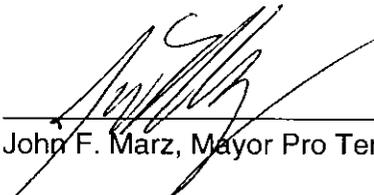
Dan K. Shaw

Dan H. Stewart

Those voting nay: None

Those abstaining: None

Those absent: Debra March, Mayor

  
\_\_\_\_\_  
John F. Marz, Mayor Pro Tem

ATTEST:

  
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Sabrina Mercadante, MMC, City Clerk