

WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS RESOLUTION
(“RESOLUTION”)
THE WASHINGTON COUNTY
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (“C-PACE”) PROGRAM

WHEREAS, the 2nd Session of the 57th Legislature passed and the Governor signed Senate Bill 1592, which amends 19 O.S. Section 460.5 (“the Oklahoma Energy Independence Act”).

WHEREAS, the amendments to the Oklahoma Energy Independence Act contained in Senate Bill 1592 became effective on November 1, 2020.

WHEREAS, Pursuant to the Oklahoma Energy Independence Act, 19 O.S. § 460.1, *et. seq.*, specifically §460.5 (the “Act”) authorizes the governing body of a county to, without the prior establishment of a County Energy District Authority, establish a commercial Property Assessed Clean Energy (“C-PACE”) program to facilitate financing arrangements between eligible property owners and private capital providers in the form of loans made pursuant to the Act.

WHEREAS, C-PACE is a financing mechanism that enables low cost, long term private funding to private commercial property owners, for energy efficiency, renewable energy, water conservation, and resiliency projects that is repaid by a voluntary assessment on the property.

WHEREAS, C-PACE is a simple, market-based economic development tool that improves properties, reduces energy and water expenses, creates jobs, and generates environmental benefits by conserving natural resources.

WHEREAS the Act authorizes counties that establish C-PACE programs to enter into assessment contracts with eligible property owners and private capital providers to levy assessments on the property to repay C-PACE Financing, as defined herein, and whereby private capital providers agree to collect the assessments and enforce the lien for an unpaid assessment as set forth in the Act.

WHEREAS the Act authorizes counties to retain a third-party administrator for the administration of a C-PACE program.

WHEREAS, Washington County, Oklahoma (the “County”) wishes to establish a C-PACE program to introduce a mechanism that enables low cost, long-term private financing to a Property Owner (as defined in Section 7 of this Resolution) of Qualifying Property (as defined in Section 5 of this Resolution) for implementing improvements related to energy efficiency, energy sources, water conservation, and building resiliency projects, as set forth in the Act.

WHEREAS, the Board of County Commissioners finds that third-party private financing through contractual assessments for energy efficiency, energy source, water conservation, and building resiliency improvements that are permanently affixed to existing or newly constructed

buildings furthers essential government purposes, such as encouraging economic development, reducing energy consumption and costs, conserving water resources, and promoting building resiliency.

WHEREAS, the Board of County Commissioners finds that the administration of the C-PACE Program, by a qualified independent third-party organization ("Program Administrator") to be compensated by application and administration fees paid by each participating Property Owner, will enable the C-PACE Program to be administered impartially and will be convenient and advantageous to the citizens of the County;

NOW THEREFORE, be it resolved by the Washington Board of County Commissioners

1. AUTHORIZATION OF PROGRAM: the County hereby adopts this Resolution authorizing the creation of the Washington County Property Assessed Clean Energy Program, herein called the "C-PACE Program" or the "Program," and finds that the financing by a private capital provider of Eligible Improvements (as defined in Section 4 of this Resolution) on Qualifying Property through contractual assessments ("C-PACE Financing") is a valid public purpose and is convenient and advantageous to Washington County and its citizens.
2. REGION: The boundaries of the entire geographic area within Washington County's jurisdiction, which shall include all cities and towns within the County, are included in the boundaries where C-PACE Financing can occur.
3. PROGRAM PROCEDURES: The Board of County Commissioners hereby authorizes and directs the Indian Nations Council of Governments ("INCOG") to serve as the initial Program Administrator under the terms of separate agreement with the County ("County/INCOG Memorandum of Agreement"), which shall include but not be not limited to:
 - (a) Development of program guidelines for the C-PACE Program to include application instructions, application review and approval, program reporting, contractor and private capital provider engagement and training, and
 - (b) Development of a fee schedule to pay for the administration of the C-PACE Program at no cost to the County.

The Board of County Commissioners hereby authorizes [BOCC AND/OR COUNTY OFFICE/EMPLOYEE] to assist the Program Administrator in coordination with the County for administration of the Program.

Neither the County nor the Program Administrator shall offer to a Property Owner any services such as energy audits, project development, or other activities associated or related to the development of an application or installation of Eligible Improvements (as defined in Section 4 of this Resolution) unless priced separately and open to purchase by the Property Owner from

qualified third parties.

4. **ELIGIBLE IMPROVEMENTS:** Improvements or appliances financed under the C-PACE Program may be for new construction or existing buildings that are Qualifying Properties and must be permanently affixed to the property. The following improvements (“Eligible Improvements”), either new or replacement, are eligible under the C-PACE Program, subject to any and all program guidelines adopted by the County or the Program Administrator:
- (a) Energy efficiency improvements that reduce a property’s energy consumption or that enable the property to operate more energy efficiently. For retrofits of existing properties, the baseline threshold is identified as the energy usage of the property or the efficiency level of the improvements that are being replaced. The baseline for new construction is the current building energy code of the County required for the property.
 - (b) Water conservation improvements that reduce a property’s water consumption or that enable the property to manage water more efficiently. For retrofits of existing properties, the baseline threshold is identified as the water usage of the property or the efficiency level of the improvements that are being replaced. The baseline for new construction is the current building construction code of the County required for water related improvements for the property.
 - (c) Energy source improvements including a product, device, or interacting group of products or devices that uses energy technology to generate electricity, provide thermal energy, or regulate temperature; and/or
 - (d) Building resiliency improvements including but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, healthy buildings, energy storage, and microgrids; and/or
 - (e) Other energy efficiency, water conservation, energy source, or building resiliency improvements as may be recommended by the Program Administrator pursuant to the County Agreement.

Proposed Eligible Improvements or Eligible Improvements installed within twenty-four (24) months prior to the issuance of a C-PACE Financing are eligible under the Program.

5. **QUALIFYING PROPERTY:** All properties located in the County, except single-family residential properties or any property zoned as single-family residential property, on which property taxes are to be paid and on which the Property Owner is current in the payment of the property taxes, if applicable, are eligible for participation in the C-PACE Program. Pursuant to the Act, property that is not classified as single-family residential property shall be classified as commercial property (such property is referred to herein as “Qualifying Property”).
6. **QUALIFYING COSTS:** C-PACE Financing may be used to pay for all costs incurred by a Property Owner in connection with the Eligible Improvements, including but not limited to: the cost of any energy, water and/or resiliency assessment required to demonstrate Eligible Improvements; project management, design, installation, and construction of the Eligible

Improvements; energy savings or performance guaranty or insurance; building accreditation; closing costs of the C-PACE financing; permitting fees; administrative fees; and post-installation commissioning, evaluation, operations or maintenance of Eligible Improvements.

7. **PROPERTY OWNER:** In order to be eligible for C-PACE Financing, the property owner or owners, in the case of a property with multiple owners (and in either case referred to herein as the "Property Owner") shall:
 - (a) hold exclusive legal and equitable title to 100% of the ownership interest in the Qualifying Property located in the County for which Eligible Improvements are proposed;
 - (b) demonstrate that the most recent property taxes, assessments, and charges on the property have been paid;
 - (c) obtain written consent to the lien to be recorded pursuant to the C-PACE Financing by all current mortgage holders on the property prior to the issuance of C-PACE Financing;
 - (d) submit an application that is approved under the program guidelines adopted by the County demonstrating Eligible Improvements.
8. **CONTRACTUAL ASSESSMENT:** To facilitate C-PACE Financing of Eligible Improvements on Qualifying Properties, the County will enter into a contract with a participating Property Owner and a private capital provider ("Assessment Contract"), in which:
 - (a) The County will levy annual assessments, inclusive of accrued but unpaid interest and any applicable penalties, costs, fees, charges, late payment charges, default interest rate charges, prepayment premiums or administrative expenses related to the C-PACE Financing as described in this Resolution and the Assessment Contract (each an "Annual Assessment" and collectively, the "C-PACE Assessments") to repay the C-PACE Financing);
 - (b) The Property Owner shall be deemed to consent to the levying and collection of C-PACE Assessments to repay the C-PACE Financing;
 - (c) The private capital provider shall agree to collect the C-PACE Assessments directly from the Property Owner or through a servicer; and
 - (d) The private capital provider shall agree to enforce the C-PACE Lien, as defined in Section 10 of this Resolution, for an unpaid Annual Assessments pursuant to the Act and the provisions of this Resolution.
9. **C-PACE LIEN:** C-PACE Assessments levied pursuant to an Assessment Contract constitute a lien on the subject property ("C-PACE Lien") upon the recording of such Assessment Contract in the office of the County Clerk. Such lien shall run with the property and have the same priority and status as a lien for unpaid ad valorem property taxes and shall not be extinguished by virtue of a sale by the county for delinquent property taxes or other special assessments.
10. **ENFORCEMENT:** The method of enforcing a C-PACE Lien for failure to pay C-PACE Assessments shall be by the private capital provider in the same manner and with the same priority as the enforcement by a holder of any bond or coupon related to a lien for unpaid

assessment, as provided by Oklahoma law and the Act. If any Annual Assessment remains unpaid for six (6) months after payment is due, the private capital provider may file an action in the district court in which the property is located to foreclose the C-PACE Lien inclusive of accrued statutory delinquent interest at the same rate as a late payment penalty for delinquent ad valorem taxes, and reasonable legal fees. Any action filed pursuant to this Resolution and the Act shall not accelerate repayment of the unpaid balance of the C-PACE Financing. Judgment in an action to enforce the C-PACE Lien shall order the property to be sold in the manner and form as foreclosure of mortgages on real estate, with appraisement. The sale shall be subject to existing taxes and special assessments, as well as C-PACE Assessments.

Notwithstanding any other provision of law, the County Treasurer, in a sale for delinquent ad valorem property taxes or other special assessments, may collect in that sale C-PACE Assessments, inclusive of penalties and fees, that are currently due or in arrears, or both, and remit the C-PACE Assessment amounts received to the private capital provider.

11. COUNTY: The County's sole role and purpose is to effectuate the purpose of the Act. Additionally:

(a) Notwithstanding any other provision of law, if the County takes title to a property subject to C-PACE Assessments, the County and not the County resale property fund, shall be responsible for all expenses associated with the preservation of the property and the related C-PACE Assessments that are due will continue to accrue, inclusive of any interest or penalties, and shall not be extinguished.

(b) County Treasurers that enforce delinquent C-PACE Assessments pursuant to Section 11 of this Resolution may collect fees for costs incurred in such enforcement in an amount to be fixed by the Board of County Commissioners and which shall be deposited with the County Treasurer as required by law. Notwithstanding the foregoing, such fees shall be charged and collected separately from the delinquent C-PACE Assessments and the receipt of such fees will not have the effect of diminishing or reducing the C-PACE Assessment amounts owing on the property.

12. AMENDMENTS: The Board of County Commissioners may amend the Washington County PACE Program by resolution at any time.

Adopted this ____ day of _____, 20__.