

STAFF REPORT

TO: Summit County Council
FROM: Lisa Yoder, Sustainability Program Manager
DATE: November 7, 2018
SUBJECT: Commercial Property Assess Clean Energy (C-PACE)



This staff report accompanies the Local Entity Participation Agreement and Local Entity Resolution to opt in to the statewide Commercial Property Assess Clean Energy (C-PACE) District for review and possible approval.

BACKGROUND

On October 4, 2017 County Council passed Resolution 2017-16 to actively seek to implement strategies and policies to encourage the reduction of greenhouse gas emissions (GHG) countywide by 80% below their 2014 level by 2050.

Paragraph 4 of Resolution 2017-16 also states, “Summit County's initial preference for reducing greenhouse gases related to carbon based energy sources will be strategies and policies to increase energy efficiency. Accordingly, Summit County will pursue policies to increase energy efficiency in the public and private sectors....”

PROBLEM

The cost of making large-scale energy efficiency and/or renewable energy investments in multi-family housing structures, industrial facilities and commercial buildings can be cost prohibitive, preventing owners from taking action to reduce GHG emissions associated with fossil-fuel based energy consumption.

SOLUTION

Community Property Assess Clean Energy (C-PACE) is a type of long-term financing that is available to help upgrade buildings, while decreasing GHG emissions and utility costs. Enacted in 30 states, each state has unique rules governing the financing structure.

The Utah Legislature enacted the first version of C-PACE with Senate Bill 221 in 2013. The C-PACE program was streamlined with passage of Senate Bill 273 in 2017. This authorized creation of a state-wide district to be administered by the Office of Energy Development (OED). This state-wide district is opt-in for municipalities, enabling OED to administer the program on behalf of the municipalities. It means that cities do not need to hire staff or third-party administrators. OED handles vetting, outreach, education, and aligning competitive financial bidders with projects. Currently, Salt Lake City and Provo have opted-in, with other communities joining in the next few months.¹

¹ Park City Council Staff Report, July 19, 2018 by Luke Cartin, Environmental Sustainability Manager

According to the Utah C-PACE webpage, C-PACE is a private financing program for energy improvements that has been adopted by more than 30 states, including Utah. (Note that this website only applies to participants in the C-PACE District that is administered and operated by the Governor's Office of Energy Development (OED)).

The financing can be provided by capital providers in an open market, which provides property owners with competitive, private financing. The financing is secured through a voluntary energy assessment and assignable lien that is levied against the owner's property and repaid to the capital provider; the term is typically based on the useful life of the improvements and can extend up to 30 years.

Because the long-term financing can cover up to 100 percent of a building's modernization project cost and often requires no money down, C-PACE may enable property owners to make substantial upgrades to their buildings. The project's energy cost reductions may outweigh the C-PACE payments, which creates positive cash flow for the property owner, whose upgraded building may be more valuable after a C-PACE project.

Communities can opt in to the statewide C-PACE financing program, making it immediately available to qualifying property types. Several cities have agreed to opt in to date: Logan, Moab, Ogden, Orem, Park City, Provo, Riverdale, Salt Lake City, and West Jordan. Here is a map showing which cities have opted in: <https://utahcpace.com/participating/>.

No counties have opted in yet, although Box Elder County is ready to opt in once there is a project in their county limits.

If Summit County Council would like to opt in to the C-PACE district, it must execute the Local Entity Participation Agreement (Exhibit A) and adopt a Local Entity Resolution (Exhibit B) in order to comply with Utah Code Section 11-42a-106. The agreement and the resolution must both be passed to opt in.

STAFF RECOMMENDATION

Pass Resolution and Participation Agreement to provide C-PACE financing in Summit County.

DEPARTMENT REVIEW

Sustainability, Legal

FUNDING

No funding is required at this time.

ATTACHMENTS

Exhibit A - Local Entity Participation Agreement

Exhibit B - Local Entity Resolution

Exhibit A

C-PACE Governing Body Participation Agreement

THIS C-PACE GOVERNING BODY PARTICIPATION AGREEMENT (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2018, by and between **SUMMIT COUNTY**, a body corporate and politic of the State of Utah (the “**County**”), and the **GOVERNOR’S OFFICE OF ENERGY DEVELOPMENT (“OED”)**, an independent body corporate and politic of the State of Utah responsible for the C-PACE District established under Utah Code Ann. § 11-42a (2017) (the “**Statute**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

WHEREAS, Section 11-42a-103 of the Utah Code established commercial property assessed clean energy financing in the State of Utah; and,

WHEREAS, Section 11-42a-106 of the Utah Code established the “**C-PACE District**,” and OED, through the C-PACE District facilitates financing for eligible building improvements to commercial, mining, manufacturing, public/private club, lodging, industrial, agricultural, and multifamily properties (with five or more rentable units) by using a voluntary energy assessment to provide security for repayment of the financing. OED may delegate its powers under this chapter to a third party to assist in administering and directing the operation of the C-PACE District; and,

WHEREAS, Section 11-42a-106 of the Utah Code directs OED to “establish and administer” the C-PACE District, but stipulates that the C-PACE District may only operate within the jurisdiction of the County if the Summit County Council (the “**Council**”), acting in its capacity as the governing body of the County, has made a written request to OED authorizing OED to create an energy assessment area, as defined in Section 11-42a-102(10) of the Utah Code, and to finance an improvement within that energy assessment area (the “**Request**”), and,

WHEREAS, the Request may take the form of a resolution authorizing OED to conduct the C-PACE District within the County and authorizing the County to enter into this Agreement with OED; and,

WHEREAS, the Council has formally made a Request through the adoption of the resolution set forth in Exhibit A, which is attached hereto and incorporated into this Agreement by this reference;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Statute, it is hereby agreed as follows:

Section 1. Definitions

- (a) **“Application”** means a request by the Owner of a Participating Property for financing through the C-PACE District.
- (b) **“Assessment”** means a voluntary energy assessment as defined in Section 11-42a-102 of the Utah Code.
- (c) **“Energy Assessment Lien”** means a lien on property within an energy assessment area authorized by the Statute, as further defined in Section 11-42a-102 of the Utah Code.
- (d) **“Commercial Building”** means any commercial or industrial real property, including residential buildings containing five or more dwelling units for rent, as further defined in Section 11-42a-102 of the Utah Code.
- (e) **“Eligible Improvements”** means one or more publicly or privately owned energy efficiency upgrade, renewable energy system, battery storage system, and/or electric vehicle charging infrastructure, hybrid transport device, seismic upgrade, and/or hybrid transport device improvements, made to Participating Property, as specified in the Statute.
- (f) **“Owner”** means the owner of the Participating Property.
- (g) **“Participating Property”** means a Commercial Building that (a) directly benefits from Eligible Improvements, (b) whose owner has voluntarily consented to its inclusion within the energy assessment area, and (c) is located within an energy assessment area.
- (h) **“Program Guide”** means the rules and regulations promulgated by OED to implement the C-PACE District pursuant to the Statute, as the same may be amended or supplemented from time to time.

Section 2. Obligations of OED.

- (a) Program Requirements.

Pursuant to the Statute, OED:

- (1) shall develop a Program Guide that governs OED’s administration of the C-PACE District. OED may serve as a facilitator for the purpose of securing third-party financing for Eligible Improvements pursuant to the Statute; and

(2) shall receive and review Applications submitted by Owners of Participating Properties for financing of Eligible Improvements, and approve or disapprove such Applications in accordance with the Statute.

(b) Application Requirements.

If an Owner makes an Application for financing through the C-PACE District for Eligible Improvements under the Statute, OED shall review the Application against the requirements in Statute.

(c) Assessment and Financing Agreement.

The party providing the financing (the “**Capital Provider**”) may enter into an Assessment and Financing Agreement with the Owner of Participating Property (the “**Assessment & Financing Agreement**”). The Assessment & Financing Agreement shall clearly state the amount of the Assessment to be levied against the Participating Property. OED and the Capital Provider shall disclose to the Owner the costs and risks associated with participating in the C-PACE District, including risks related to the failure of the Owner to pay the Assessment provided for in the Assessment & Financing Agreement. The Capital Provider shall disclose to the Owner the effective interest rate on the Assessment, including other fees and charges imposed by OED to administer the C-PACE District as well as any fees charged by the Capital Provider. The Owner must be informed that each Eligible Improvement, regardless of its useful life, may be bundled with other such improvements on the Participating Property for purposes of Assessment and paid for over the Assessment term.

(d) Establish Assessments and Assessment Units.

With respect to each Assessment placed on a Participating Property, OED shall determine from the Capital Provider and Owner the amount of the Assessment. OED shall approve the specifics of the applicable Assessment including, without limitation, the amount of the Assessment, term, interest rate and repayment dates in accordance with the Statute. In no event shall the amount of any Assessment exceed the value of: (a) the Assessment benefit provided to the Participating Property, or (b) the Participating Property, as provided in the Statute. Costs incurred for any property not approved to participate in the C-PACE District may not be included in a certified Assessment roll.

(e) Filing Assessment with Applicable County Clerk or Recorder.

Upon the execution of an Assessment & Financing Agreement, the Capital Provider shall, in collaboration with the County, (i) file and record such Energy Assessment Lien in the public land records of the County, (ii) assign such lien, and (iii) amend such lien from time to time.

Section 3. Obligations of the County.

(a) Promotion of Program; Assistance to the C-PACE District.

The County shall use good faith efforts to assist OED in marketing efforts and outreach to the local business community to encourage participation in the C-PACE District, such as including C-PACE District information on the County's website, distributing an informational letter from appropriate County officials to local businesses regarding the program, and conducting one or more business roundtable events.

Section 4. Obligations of the Capital Provider.

(a) Billing and Collection of Assessments.

Upon assignment of the Energy Assessment Lien to the Capital Provider, the Owner shall make all Assessment payments directly to the Capital Provider pursuant to the Assessment & Financing Agreement, and the Capital Provider shall be responsible, subject to and in accordance with the terms of the Assessment & Financing Agreement, for all billing, collection, enforcement and administrative duties with respect of each of the Assessment payments and the Energy Assessment Lien.

Section 5. Term and Termination.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the Assessments have been paid in full or deemed no longer outstanding. As authorized by the Statute, the Council may adopt a resolution de-authorizing OED from administering the C-PACE District within its jurisdiction. If the Council adopts a de-authorizing resolution, the County shall continue to meet all of its obligations under this Agreement and the Statute, as to all Assessment obligations existing on the effective date of the de-authorizing resolution until any and all outstanding Assessments have been paid in full and remitted to the Capital Provider.

Section 6. Default.

Each Party shall give the other Party written notice of any breach of any covenant or term of this Agreement and shall allow the defaulting Party thirty (30) calendar days from the date of its receipt of

such notice within which to cure any such default or, if it cannot be cured within the thirty (30) days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other Party of the actual cure of any such default. The Parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance.

Section 7. Miscellaneous Provisions.

(a) Amendment and Termination.

After a Capital Provider provides funds to finance the costs of any Eligible Improvement, this Agreement may not be amended or terminated by the Parties without the prior notification of the holders of the assignable Energy Assessment Lien.

(b) Severability.

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section shall not affect the remaining clauses, provisions or sections, and this Agreement shall be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

(c) Counterparts.

This 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, mailed by first class mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

If to the County:

Thomas C. Fisher
County Manager
Summit County Courthouse
60 N. Main
P.O. Box 128
Coalville, Utah 84017

With a Copy to:

Summit County Attorney
Summit County Courthouse
60 N. Main
P.O. Box 128
Coalville, Utah 84017

If to OED:

C-PACE District
c/o Utah Governor's Office of Energy Development
P.O. Box 144845
Salt Lake City, UT 84114
Attention: Shawna Cuan

With a Copy to:

Brian McCarter, Sustainable Real Estate Solutions, Inc. (SRS)
100 Technology Drive, Suite 209
Trumbull, CT 06611
bmccarter@paceworx.com

(e) Amendment.

Except as otherwise set forth in this Agreement, any amendment to any provision of this Agreement must be in writing and mutually agreed to by OED and the County.

(f) Applicable Law and Venue.

This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Utah. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the Third District Court of Summit County, State of Utah.

(g) Entire Agreement.

This Agreement constitutes the entire understanding between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement. In the event of any conflict between the Program Guide and this Agreement, the terms of this Agreement shall control.

(h) Headings.

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

(i) Changes in Law or Regulation.

This Agreement is subject to such modifications as may be required by change in federal or Utah state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and made a part of this Agreement on the effective date of such change, as if fully set forth herein.

(j) Third-Party Beneficiaries.

It is specifically agreed among the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any claim under this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

(k) No Waiver of Rights.

A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

(l) No Waiver of Governmental Immunity.

Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the County or to OED, their officials, employees, contractors, or agents, or any other person acting on behalf of the County or OED.

(m) Independent Entities.

The Parties shall perform all services under this Agreement as independent entities and not as an agent or employee of the other Party. It is mutually agreed and understood that nothing contained in this Agreement is intended, or shall be construed as, in any way establishing the relationship of co-partners or joint ventures between the Parties hereto, or as construing either Party, including its agents and employees, as an agent of the other Party. Each Party shall

remain an independent and separate entity. Neither Party shall be supervised by any employee or official of the other Party. Neither Party shall represent that it is an employee or agent of the other Party in any capacity.

IN WITNESS WHEREOF, the County and OED have each caused this Agreement to be executed and delivered as of the date indicated above:

SUMMIT COUNTY

By: _____

Thomas C. Fisher

County Manager

APPROVED AS TO FORM:

David L. Thomas

Chief Civil Deputy

UTAH GOVERNOR'S OFFICE OF ENERGY DEVELOPMENT

By: _____

Laura Nelson, Executive Director

Exhibit B

Resolution No. 2018-_____

**A RESOLUTION CONCERNING THE AUTHORIZATION OF OED TO CONDUCT THE
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY DISTRICT (C-PACE DISTRICT),
WITHIN SUMMIT COUNTY, UTAH**

RECITALS

- A. Utah Code Ann. § 11-42a (2017) (the “**Statute**”) establishes the **GOVERNOR’S OFFICE OF ENERGY DEVELOPMENT (“OED”)**, an independent body corporate and politic of the State of Utah, and establishes the “**C-PACE District**” and further provides for the creation of new energy improvement financing, which OED has named “C-PACE” or Commercial Property Assessed Clean Energy.
- B. Pursuant to Section 11-42a-106 of the Utah Code, OED may only “establish and administer” the C-PACE District in each jurisdiction upon a request by the governing body of that jurisdiction to OED to create an energy assessment area and finance an improvement within that energy assessment area.
- C. The Summit County Council (the “**Council**”), acting as the governing body of Summit County (the “**County**”), wishes to request and authorize OED to administer projects through the C-PACE District in the County.
- D. OED and the County have agreed on the terms of the C-PACE Governing Body Participation Agreement in the form attached hereto (the “**Participation Agreement**”).

NOW, THEREFORE, BE IT RESOLVED, by the County Council of Summit County, Utah, as follows:

Section 1. The Council hereby authorizes OED to create within the County energy assessment areas in accordance with Title 11, Chapter 42(a) of the Utah Code to enable the financing by third-party lenders of eligible improvements within designated energy assessment areas.

Section 2. The Council hereby authorizes the Governor’s Office of Energy Development (“**OED**”) to establish and administer the C-PACE District within the County Body in accordance with the Participation Agreement.

Section 3. The Council hereby: (a) adopts the above recitations as findings of the Council; (b) authorizes the County Attorney, in consultation with the County Manager, to make such changes as may be needed to the Participation Agreement in order to correct any nonmaterial errors or language that do not materially increase the obligations of the County; (c) authorizes the County Manager to execute the Participation Agreement following review and approval by the County Attorney; and (d) authorizes the Chair, County Manager, or designee to execute any and all other necessary letters, orders, or documents as may be required to facilitate the successful implementation of the C-PACE District in the County.

PASSED, APPROVED AND ADOPTED on this ____ day of _____, 2018.

SUMMIT COUNTY COUNCIL

Kim Carson
Chair

ATTEST:

Kent Jones
County Clerk

APPROVED AS TO FORM:

David L. Thomas
Chief Civil Deputy