

**CITY OF LOGAN, UTAH
RESOLUTION NO. 18-33**

**A RESOLUTION CONCERNING THE AUTHORIZATION OF OED TO CONDUCT THE COMMERCIAL
PROPERTY ASSESSED CLEAN ENERGY DISTRICT (C-PACE) WITHIN THE CITY OF LOGAN**

WHEREAS, 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 provides for the creation of new energy improvement financing, which the District has named “C-PACE” or Commercial Property Assessed Clean Energy;

WHEREAS, Pursuant to Section 11-42a-106 of the Utah Code, OED may only “establish and administer” the C-PACE District in the City of Logan if the City of Logan authorizes it do so by resolution;

WHEREAS, The City of Logan wishes to authorize OED to administer projects through the C-PACE District in the City of Logan;

WHEREAS, OED and City of Logan have agreed on the terms of the C-PACE City of Logan Participation Agreement in the form attached hereto (the “Participation Agreement”);

NOW THEREFORE BE IT RESOLVED that the Governor’s Office of Energy Development shall be authorized to conduct the C-PACE District in the City of Logan in accordance with the Participation Agreement.

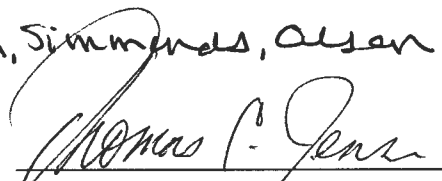
The City of Logan hereby: (a) adopts the above recitations as findings of the City of Logan ; (b) authorizes the City of Logan Attorney, in consultation with the Chair, to make such changes as may be needed to the Participation Agreement in order to correct any nonmaterial errors or language that do not materially increase the obligations of the City of Logan; (c) authorizes the Chair to execute the Participation Agreement following review and approval by the City of Logan Attorney; and (d) authorizes the Chair, Vice Chair, 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 City of Logan.

PASSED BY THE LOGAN MUNICIPAL COUNCIL THIS 21 DAY OF August, 2018 BY THE FOLLOWING VOTE.

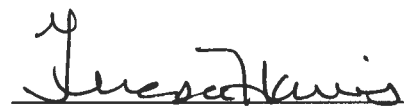
AYES: Anderson, Bradfield, Jensen, Simmons, Olson

NAYS: none

ABSENT: none


Thomas C. Jensen, Chair

ATTEST:





City of Logan C-PACE Participation Agreement

THIS C-PACE CITY OF LOGAN PARTICIPATION AGREEMENT (the “**Agreement**”) is made and entered into as of the 21 day of August, 2018, by and between **City of Logan**, a body corporate and politic of the State of Utah, 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 if the City of Logan has adopted a resolution authorizing OED to conduct projects in their jurisdiction, and

WHEREAS, Section 11-42a-106 of the Utah Code requires the City of Logan to adopt a resolution in the form attached hereto as Exhibit A, authorizing OED to conduct the C-PACE District within the City of Logan and authorizing the City of Logan to enter into this Agreement with OED;

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) “**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.

- (b) “**Commercial Building**” means any commercial or industrial real property, including residential buildings containing five or more dwelling units for rent.

Teresa Harris, City Recorder
Dear Council Members,

Commercial Property assessed clean energy, or C-PACE is a private financing program for energy improvements that has been adopted by more than 20 states, including Utah. During the 2017 legislative season, rules and regulations regarding commercial property assessed clean energy, or C-PACE, financing was streamlined to make it easier than ever for businesses in Utah to participate. That legislation established a C-PACE district that is administered and operated by the Governor's Office of Energy Development (OED). Businesses within Logan City are eligible to participate in C-PACE financing only if Logan City becomes a participant of the C-PACE District.

Council is asked to adopt the provided resolution which authorizes OED to conduct the C-PACE district in Logan City in accordance with the Participation Agreement (also attached). Mayor Daines, Rich Anderson, and Kirk Jensen have read the agreement and have no objection to joining the C-Pace district.

The city's only obligation is to assist OED in marketing efforts and outreach to the local business community to encourage participation in the C-PACE District. This may include publishing information on the website, distributing an information letter to local businesses, and conducting one or more information meetings.

Below you will find more information about C-PACE Financing taken from the C-PACE website: <https://utahcpace.com/municipalities/municipalities-how-it-works/>. I am happy to answer any additional questions you might have about the program.

Thank you for taking the time to familiarize yourself with C-Pace Financing.

Emily Malik

How does C-PACE work?

As stated previously, C-PACE is a private financing program for energy improvements. The financing can be provided by capital providers in an open market, which provides property owners with competitive, private financing. The financing is secured by using the government's ability to place a voluntary energy assessment and assignable lien on the owner's property. The project is repaid to the capital provider over a term 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 savings may outweigh the C-PACE payments, which creates positive cash flow for the property owner, whose upgraded building may be more appealing to tenants and new businesses after a C-PACE project.

BENEFITS

C-PACE may benefit your community's economic by stimulating new investment, creating job opportunities, and enabling energy savings. Updated buildings can have improved tenant occupancy. The energy savings from the project can often exceed the repayment, resulting in net positive cash flows for the property owner.

Reduced energy use results in less demand on the grid and improved reliability for the community. In addition, it reduces the building's emissions, which improves the local air quality.

Nationwide, more than 30 states have PACE-enabling legislation, and several others are considering it.

PARTICIPATION

OED operates the C-PACE District, which administers C-PACE projects. Cities and counties join the C-PACE District when they want to enjoy all of the benefits without committing staff and resources to creating their own C-PACE programs. By opting-in, your community allows the C-PACE District to handle all education and outreach, project development, recording, and project closing.

ELIGIBLE PROJECTS

Eligible projects are set by the statute and include one or more energy efficiency, renewable energy, battery storage, electric vehicle charging infrastructure, hybrid transport device, seismic upgrade, and/or hybrid transport device improvements.

City of Logan C-PACE Participation Agreement

THIS C-PACE CITY OF LOGAN PARTICIPATION AGREEMENT (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2018, by and between **City of Logan**, a body corporate and politic of the State of Utah, 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 if the City of Logan has adopted a resolution authorizing OED to conduct projects in their jurisdiction, and

WHEREAS, Section 11-42a-106 of the Utah Code requires the City of Logan to adopt a resolution in the form attached hereto as Exhibit A, authorizing OED to conduct the C-PACE District within the City of Logan and authorizing the City of Logan to enter into this Agreement with OED;

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) “**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.

(b) “**Commercial Building**” means any commercial or industrial real property, including residential buildings containing five or more dwelling units for rent.

(c) **“Eligible Improvements”** means one or more energy efficiency, renewable energy, battery storage, electric vehicle charging infrastructure, hybrid transport device, seismic upgrade, and/or hybrid transport device improvements, made to Participating Property, as specified in the Statute.

(d) **“Participating Property”** means a Commercial Building that is eligible to participate in the C-PACE District.

(e) **“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 and a User Guide that provides recommended best practices to C-PACE stakeholders. OED may serve as a facilitator for the purpose of securing state or private third-party financing for Eligible Improvements pursuant to the Statute; and

(2) shall receive and review applications submitted by property owners within the City of Logan for financing of Eligible Improvements, and approve or disapprove such applications in accordance with the Statute.

(b) Project Requirements.

If a property owner requests financing through the C-PACE District for improvements under the Statute, OED shall review the project application against the requirements in Statute, and

(c) Assessment and Financing Agreement for Project.

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 Voluntary Energy Assessment to be levied against the Participating Property. OED and the Capital Provider shall disclose to the property owner the costs and risks associated with

participating in the C-PACE District, including risks related to the failure of the property owner to pay the Voluntary Energy Assessment provided for in the Assessment & Financing Agreement. The Capital Provider shall disclose to the property owner the effective interest rate on the Voluntary Energy 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 property 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 Voluntary Energy Assessments and Assessment Units.

With respect to each Voluntary Energy Assessment placed on a Participating Property, OED shall determine from the Capital Provider and property owner the amount of the Voluntary Energy Assessment. OED shall approve the specifics of the applicable Voluntary Energy Assessment including, without limitation, the amount of the Voluntary Energy Assessment, term, interest rate and repayment dates in accordance with the Statute. In no event shall the amount of any Voluntary Energy Assessment exceed the value of: (a) the Voluntary Energy 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 may not be included in a certified assessment roll.

(e) Filing Assessment with Cache County Clerk & Recorder.

Upon the execution of an Assessment & Financing Agreement, the Capital Provider will be responsible, in collaboration with Cache County, to (i) file and record such energy assessment lien in the public land records of Cache County, (ii) assign such lien, and (iii) amend such liens from time to time.

Section 3. Obligations of the City of Logan.

(a) Promotion of Program; Assistance for C-PACE Financing.

The City of Logan 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 City of Logan's website, distributing an informational letter from appropriate City of Logan 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 Energy Assessments.

Upon assignment of the energy assessment lien to the Capital Provider, the Participating Property will make all such assessment payments directly to the Capital Provider pursuant to the Assessment & Financing Agreement, and the Capital Provider will be responsible, subject to and in accordance with the terms of the Assessment & Financing Agreement, for all billing, collection, enforcement and administrative duties in respect of each of the assessment payments and the 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 Voluntary Energy Assessments have been paid in full or deemed no longer outstanding. As authorized by the Statute, the City of Logan may adopt a resolution deauthorizing OED from administering the C-PACE District in their jurisdiction. If the City of Logan adopts a deauthorizing resolution, it shall continue to meet all of its obligations under this Agreement and the Statute, as to all C-PACE financing obligations existing on the effective date of the deauthorizing resolution until any and all C-PACE voluntary energy assessments have been paid in full and remitted to 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 C-PACE project, this Agreement may not be amended or terminated by the Parties without the prior approval of the holders of the assignable lien, which approval shall be obtained in accordance with the indenture or other documents entered into by OED in connection with such financing.

(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 will not affect the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has 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 City of Logan:

Holly Daines, Mayor of Logan City
290 N 100 W
Logan, UT 84321

With a Copy to:

KyMBER Housley, City of Logan Attorney
290 N 100 W
Logan, UT 84321

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:

(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 City of Logan.

(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 district courts of the City of Logan, the State of Utah.

(g) Entire Agreement.

This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this 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. Headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

(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 City of Logan or to OED, their officials, employees, contractors, or agents, or any other person acting on behalf of the City of Logan 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 City of Logan and OED have each caused this Agreement to be executed and delivered as of the date indicated above:

CITY OF LOGAN

By: Holly H. Daines
Holly Daines, Logan City Mayor

Attest:
Teresa Harris
Teresa Harris, Logan City Recorder



APPROVED AS TO FORM:

[Signature]
Logan City Attorney

UTAH GOVERNOR'S OFFICE OF ENERGY DEVELOPMENT

By: _____
Laura Nelson, Executive Director

Attest:

NAME, Recording Secretary

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

CITY OF LOGAN

By: _____

Holly Daines, Logan City Mayor

Attest:

Teresa Harris, Logan City Recorder

APPROVED AS TO FORM:

Logan City Attorney

UTAH GOVERNOR'S OFFICE OF ENERGY DEVELOPMENT

By: _____

Laura Nelson, Executive Director

Attest:

NAME, Recording Secretary



Teresa Harris <teresa.harris@loganutah.org>

Re: C-PACE Participation Agreement

1 message

Emily Malik <emily.malik@loganutah.org>
 To: Teresa Harris <teresa.harris@loganutah.org>

Mon, Aug 27, 2018 at 11:30 AM

Thank you!

Governor's Office of Energy Development
 Attn: Shawna Cuan
 PO Box 144845
 Salt Lake City, UT 84111

On Mon, Aug 27, 2018 at 11:25 AM, Teresa Harris <teresa.harris@loganutah.org> wrote:
 Yes, what is the address and I can send it.

Teresa Harris, MMC
 City Recorder
 Executive Secretary
 Mayor's Office
 Public Information Officer

City of Logan
 290 North 100 West
 Logan, UT 84321
 T 435.716.9002 F 435.716.9003
 teresa.harris@loganutah.org



On Mon, Aug 27, 2018 at 11:19 AM, Emily Malik <emily.malik@loganutah.org> wrote:
 Yes, I will let her know about wanting the original or a copy. You can send it to me to mail or I can just send you the address that it needs to be mailed to.

On Mon, Aug 27, 2018 at 11:17 AM, Teresa Harris <teresa.harris@loganutah.org> wrote:
 Hi Emily,

The Mayor, Kymber and I have all signed the C-PACE Agreement. Do you want the original back to get the other signature needed. I would like to have the original back to go with the approved resolution and if not the original then a copy?

Teresa Harris, MMC
 City Recorder
 Executive Secretary
 Mayor's Office
 Public Information Officer

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