

RESOLUTION No. 2025-_____

A RESOLUTION AMENDING THE PROGRAM GUIDELINES FOR THE OKLAHOMA COUNTY PROPERTY ASSESSED CLEAN ENERGY PROGRAM

WHEREAS, Property Assessed Clean Energy, or PACE, is a voluntary financing mechanism that enables private landowners to receive low-cost, long-term funding for energy efficiency, renewable energy sources, water conservation, and building resiliency projects at no cost to local governments; and

WHEREAS, The Oklahoma Energy Independence Act, 19 O.S. Sections 460.1 to 460.7 (and specifically 19 O.S. Section 460.5) (the "Act"), allows the governing body of a county to establish a commercial PACE program to facilitate private financing between PACE capital providers and commercial property owners located within the county; and

WHEREAS, PACE financing provides a public benefit by, among other things, improving property values, creating jobs, facilitating building resiliency, reducing energy and water expenses, and conserving natural resources; and

WHEREAS, the Act authorizes county government officials retain third-party administrators for administration of the PACE program; and

WHEREAS, Oklahoma Industries Authority ("OIA") is a public trust for the benefit of Oklahoma County that was created in 1966 to, among other things, promote and encourage the development of industry and commerce in Oklahoma County and provide facilities, employment opportunities, and activities which will benefit and strengthen the economy and welfare of the area; and

WHEREAS, in 2021 by Resolution 2021-10021, the Oklahoma County Board of County Commissioners (the "Board") created the Oklahoma County PACE Program (the "Program") and stated its intention to enter into a contract with OIA to administer the Program; and

WHEREAS, effective November 3, 2021, the Board and OIA entered into an Operating Agreement for OIA to serve as third-party administrator of the Program and providing that OIA was to develop policies and procedures to govern the Program, which policies and procedures require the Board's approval; and

WHEREAS, OIA promulgated and the Board approved the Oklahoma County C-Pace Program Guidelines dated March 22, 2022 (the "Guidelines") which have been in effect since that date; and

WHEREAS, OIA now wishes to amend the Guidelines to allow the use of variable rate financing by capital providers as set out on the Amended Guidelines, a copy of which has been provided to the Board, and the Board wishes to approve the Amended Guidelines.

NOW THEREFORE, the Board approves the Amended Guidelines for the Program.

APPROVED this _____ day of _____, 2025.

BOARD OF COUNTY COMMISSIONERS

Chair

Member

Member

Attest:

County Clerk

Assessment Contract

This Assessment Contract (this "Contract"), is made and entered into this _____ day of _____, 20____ (the "Effective Date") by and among **The Board of County Commissioners of Oklahoma County**, in the State of Oklahoma ("The County"), [**Capital Provider**], _____, a _____, ("Capital Provider"), and [**Property Owner**], a _____, ("Property Owner"), and is made a part of that certain C-PACE Financing Agreement, dated _____ made by and between Capital Provider and Property Owner (the "Financing Agreement").

Recitals

A. Property Owner is the owner of certain real property [owned in fee by _____, and] located at _____, in _____, in Oklahoma County, Oklahoma, as further described on Exhibit A, (the "Property"); and

B. The County established the Oklahoma County Property Assessed Clean Energy Program by Resolution No. 2021-10021 on November 1, 2021 (the "Program Resolution") pursuant to the Oklahoma Energy Independence Act, 19 O.S. §§ 460.1 – 460.7, specifically, 19 O.S. § 460.5 (the "Act"), for the purpose of establishing and administering a commercial property assessed clean energy ("C-PACE") program within Oklahoma County (the "Program"); and

C. The County entered into an agreement with Oklahoma Industries Authority, a public trust, ("OIA"), dated November 1, 2021, in which The County selected OIA as the initial program administrator and adopted the Oklahoma County C-PACE Program Guidelines ("Program Guidelines") as Resolution No. 2022-0840 on March 21, 2022; and

D. In order to induce Capital Provider to make the Financing, as defined below, to Property Owner, Property Owner has requested The County to enter into this Contract to impose a C-PACE Assessment on the Property to be benefited by the Project, in accordance with 19 O.S. § 460.5, which C-PACE Assessment will secure and provide for repayment of the Financing from Capital Provider, all as set out in this Contract; and

E. OIA, in its capacity as Program Administrator, has reviewed Property Owner's application for C-PACE financing and recommends that The County approve the application and enter into this Contract; and

F. Property Owner has obtained the written consent for the Financing by all persons or entities that currently hold mortgage liens on the Property, if any; and

G. Property Owner [**intends to make**] [**made**] energy-efficiency, energy source, water conservation or building resiliency improvements (as such improvements are authorized in Okla. Stat. tit. 19 § 460.5D and the Program Resolution and further described in the Program Guidelines) at the Property, as described on Exhibit B, (the "Project"); and

H. Capital Provider has been selected by Property Owner to provide financing to Property Owner, pursuant to the Act and the Program Resolution, in the amount of _____/100

“C-PACE Lien” has the meaning stated in Section 4(B).

“Financing Amount” means the outstanding amount of all principal, accrued but unpaid interest and any applicable penalties, costs, fees, charges, late payment charges, delinquent interest rate charges, prepayment premiums or administrative expenses related to the Financing, including without limitation, the administrative fees set forth in the Program Guidelines and any and all other administrative fees to be paid to The County, Program Administrator or Capital Provider by Property Owner in connection with the Financing. As of the Effective Date, the Financing Amount is _____/100 (\$_____).

“Indemnified Parties” has the meaning stated in Section 9(A).

“Maturity Date” has the meaning stated in Section 2.

“Payment Schedule” has the meaning stated in Section 2.

“Program Administrator” means OIA. Program Administrator may engage third parties to perform some, or all, of its responsibilities in administering the Program.

“Tax Sale Proceeds” means the proceeds due and owing Capital Provider resulting from the disposition of the Property by the County Treasurer in a sale for delinquent ad valorem property taxes or other special assessments.

2. Levy of C-PACE Assessment. As of _____, 20___, and each year thereafter during the Assessment Term (defined below), the Annual Assessment will be invoiced to Property Owner by Capital Provider or its designated agent. Property Owner agrees to repay all Financing Agreement obligations through the Annual Assessment which is due and payable [in semi-annual or annual installments] on the same date[s] as the Property’s tax bill. The amount and repayment of the C-PACE Assessment, as determined by Capital Provider, are as follows:

an installment payment plan is in effect for the payment of the C-PACE Assessment, and is based on the initial principal amount of the C-PACE Assessment of \$_____, with interest thereon [FIXED RATE: at a fixed rate equal to _____% per annum, calculated on the basis the actual number of days elapsed over a [360]-day period,] OR VARIABLE RATE: at a variable rate subject to the schedule of rate adjustments set out in Exhibit C] plus any capitalized interest or any additional fees and expenses agreed upon in the Financing Agreement, with installments of principal and interest due and payable pursuant to the payment schedule of Annual Assessments (the “Payment Schedule”) attached as Exhibit C. The term of the C-PACE Assessment (the “Assessment Term”) will be _____ years. The Financing must be repaid in full no later than _____, 20___ (the “Maturity Date”). Upon the Maturity Date or receipt by Capital Provider of the full Financing Amount, and upon written confirmation from Capital Provider that the C-PACE Assessment has been repaid in full, The County or Program Administrator will release the C-PACE Assessment by recording a release of C-PACE Assessment lien with the County Recorder.

On or before the ____ anniversary of the Effective Date	
[reserved]	[reserved]
[reserved]	[reserved]
[reserved]	[reserved]
[reserved]	[reserved]
[reserved]	[reserved]

Any request for prepayment must be received no later than ____ calendar days prior to the date of an Annual Assessment installment. In the event of a prepayment request, Capital Provider will provide a written quote to Property Owner within 30 calendar days, certifying the current outstanding principal balance, any prepaid principal, interest fees, and prepayment premium. Upon receipt of good funds from Property Owner in the amount stated in the quote, Capital Provider will certify to Property Owner and The County the remaining outstanding principal, interest, fees, and prepayment premium by recording an amended version of this Contract with a revised payment schedule with the County Recorder. No prepayment will be effective, and no funds paid by Property Owner will be applied to the Financing Amount, unless and until Capital Provider receives funds required for the pre-payment, as described in Capital Provider’s certification.

7. Collection of Annual Assessments; Payments to Capital Provider. The County will refuse to receive any payment due Capital Provider.

8. Delinquent Annual Assessment.

A. If Property Owner fails to pay all or part of any Annual Assessment when due, the C-PACE Lien may be enforced 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 assessments, as provided by Oklahoma law, the Act, and the Program Resolution. If any Annual Assessment remains unpaid for six months after payment is due, Capital Provider may file an action in the District Court of Oklahoma County, Oklahoma to foreclose the C-PACE Lien of such delinquent unpaid Annual Assessment, inclusive of accrued statutory delinquent interest (which will accrue at the same rate as a late payment penalty for delinquent ad valorem taxes), and reasonable legal fees. Annual Assessments will continue to be levied notwithstanding Property Owner’s failure to pay all or part of any past Annual Assessment, such that Capital Provider or its designated agent may continue to bill Annual Assessments, including default interest to be paid to Capital Provider, until the Financing Amount, including all accrued and unpaid interest, is paid in full. Judgment in an action to enforce the C-PACE Lien may order the Property to be sold in the manner and form as foreclosure of mortgages on real estate, with appraisal. The sale will be subject to existing ad valorem taxes and special assessments, as well as additional Annual Assessments and related accrued interest which remain unpaid at the time of such sale. Any such action may not accelerate repayment of the unpaid balance of the C-PACE Assessment which has not yet come due on the Property.

B. Property Owner and Capital Provider hereby acknowledge that notwithstanding the foregoing or 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 delinquent Annual Assessments, inclusive of penalties and fees, that are currently due or in arrears, or both, and remit the Tax Sale Proceeds to Capital Provider. The County agrees to separately account for the

attributable, in whole or in part to Capital Provider, including its successors and assigns, or any of their personnel, employees, consultants, agents, or any entities associated, affiliated, (directly or indirectly) or subsidiary to Capital Provider now existing, or to be created, including their agents and employees for whose acts any of them might be liable. Nothing in this Section requires Capital Provider to indemnify any party from any loss or damages arising from the negligence or intentional actions of Property Owner. Additionally, Capital Provider is under no obligation to indemnify the Indemnified Parties from responsibility for their own fraud or willful injury to the person or property of another or violation of law, whether willful or negligent. The terms and provisions of this indemnification agreement will survive the termination of this Contract. Nothing herein waives any Indemnified Party's defense of immunity from suit as provided by applicable Oklahoma Law.

10. Waiver of Claims against Capital Provider.

A. For and in consideration of Capital Provider's execution and delivery of this Contract, Property Owner, for itself and for its successor-in-interest to the Property and for anyone claiming by, through or under Property Owner, hereby waives the right to recover from Capital Provider and any and all officials, agents, employees, attorneys, and representatives of Capital Provider (collectively, the "Capital Provider Parties"), and fully and irrevocably releases Capital Provider Parties from, any and all claims, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Property Owner may now have or hereafter acquire against any of the Capital Provider Parties and accruing from or related to the liabilities, as defined above. This release includes claims, obligations, liabilities, causes of action, and damages of which Property Owner is not presently aware or which Property Owner does not suspect to exist which, if known by Property Owner, would materially affect Property Owner's release of the Capital Provider Parties. Notwithstanding the foregoing, Property Owner's release under this Section will not extend to liabilities arising from Capital Provider's intentional default, gross negligence or willful misconduct. Capital Provider acknowledges that it may not assign the Financing to any party unless that party has all requisite power and authority under the Financing Agreement and the laws under which the assignee is organized to conduct its business.

B. The waivers and releases by Property Owner contained in this Section will survive the disbursement of the Financing Amount or any portion thereof, the payment of the Financing Amount in full, the transfer or sale of the Property by Property Owner or through foreclosure and the termination of this Contract.

11. Property Owner's Representations and Warranties.

A. Property Owner represents and warrants to The County and to Capital Provider that the Property and the Project meet all eligibility requirements for the Program stated in the Program Guidelines.

B. Property Owner represents and warrants to The County and to Capital Provider that Property Owner is duly organized and validly existing as a [] in good standing under the laws of the State of Oklahoma, with power under the laws of the State of Oklahoma to carry on its business as now being conducted, and is duly qualified to do business in

for a receipt; or (2) sent by registered or certified mail, return receipt requested, postage prepaid; or (3) sent to the parties at their respective addresses indicated herein by private overnight mail courier service; or (d) sent by e-mail with delivery receipt confirmation of transmission. The respective addresses to be used for all such notices are as follows:

If to Property Owner, to:

[NAME]
[ADDRESS].
[E-MAIL]
Attention: _____

If to Capital Provider, to:

[NAME]
[ADDRESS]
[E-MAIL]
Attention: _____

If to The County, to:

Oklahoma County Clerk for the
Board of County Commissioners of Oklahoma County
320 Robert S. Kerr Room 203
Oklahoma City, OK 73102
[E-MAIL] _____
Attention: _____

With a copy to:

Oklahoma Industries Authority
Keith Kuhlman, Director of Special Projects
105 North Hudson Avenue, Suite 101
Oklahoma City, Oklahoma 73102
Email Address: keithkuhlman@theallinaceokc.org

If personally delivered, such communication will be deemed delivered upon actual receipt (or refusal to accept delivery); if sent by registered or certified mail, such communication will be deemed delivered upon actual receipt (or refusal to accept delivery); and if sent by overnight courier, such communication will be deemed delivered upon receipt. Any party to this Contract may change its address for the purposes of this Contract by giving notice thereof in accordance with this Section.

14. Assignment or Sale by Capital Provider. Property Owner and The County agree that Capital Provider may, at its option, assign the Financing, and its rights and obligations under the Financing (including this Contract and the Financing Agreement): (1) to an affiliate; (2) as collateral security to agents, arrangers, lenders, and other persons or entities that have committed

form (.pdf) or tagged image format (.tif), and electronically executed and transmitted signatures will have the same effect as manually transmitted signatures.

21. Amendment. This Contract may be amended only by a writing signed by Property Owner, Capital Provider, and The County. Except for the specific Contract provision that is amended, the Contract remains in full force and effect after such amendment and is subject to the same laws, obligations, conditions, provisions, rules, and regulations, as it was before the amendment.

22. Severability. If any one or more of the provisions of this Contract are found to be invalid, illegal or unenforceable in any respect of to any extent, such finding will not affect the validity, legality or enforceability of the remaining provisions of this Contract.

23. Transferability; Notice to Future Owners. Property Owner, Capital Provider, and The County agree that the obligations of this Contract are covenants that run with the Property, binding on all future owners of the Property. All successor owners of the Property (with the exception of The County) will take title to the Property subject to the C-PACE Lien, and by taking title to the Property, will assume the obligations of Property Owner under this Contract.

24. Governing Law; Jurisdiction and Venue. The Laws of the State of Oklahoma (excluding its conflict-of-law rules) exclusively apply to this Contract. Any claim or lawsuit arising directly or indirectly from or relating to this Contract must be filed and maintained in a court of competent jurisdiction in the state or federal courts located in Oklahoma County, Oklahoma. The parties submit to that jurisdiction and venue for all purposes.

25. Waiver. **THIS CONTRACT REFLECTS PROPERTY OWNER'S AGREEMENT TO THE IMPOSITION OF THE ASSESSMENTS AND THE LIEN OF THE ASSESSMENTS. PROPERTY OWNER HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY OTHERWISE APPLICABLE REQUIREMENTS OF THE OKLAHOMA CONSTITUTION OR ANY OTHER PROVISION OF OKLAHOMA LAW FOR THE IMPOSITION OF THE ASSESSMENTS. PROPERTY OWNER HEREBY WAIVES ITS RIGHT TO REPEAL THE ASSESSMENTS BY INITIATIVE OR ANY OTHER ACTION, OR TO FILE ANY LAWSUIT OR OTHER PROCEEDING TO CHALLENGE THE ASSESSMENTS OR ANY ASPECT OF THE PROCEEDINGS OF THE COUNTY, THE COUNTY TREASURER, AND CAPITAL PROVIDER UNDERTAKEN IN CONNECTION WITH THE PROGRAM. PROPERTY OWNER HEREBY AGREES THAT PROPERTY OWNER AND ITS SUCCESSORS IN INTEREST TO FEE TITLE IN THE PROPERTY WILL BE SOLELY RESPONSIBLE FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF THE PROJECT. PROPERTY OWNER HEREBY ACKNOWLEDGES THAT PROPERTY OWNER WILL BE RESPONSIBLE FOR PAYMENT OF THE ASSESSMENTS REGARDLESS OF WHETHER THE PROJECT IS PROPERLY INSTALLED, OPERATED, MAINTAINED OR PERFORMS AS EXPECTED.**

[Signature Pages and Exhibits Follow]

Printed Name: _____

(SEAL)

Notary Public in and for said State
Commissioned in _____

My commission expires: _____.

**Signature Page – Assessment Contract
Capital Provider**

CAPITAL PROVIDER:

[CAPITAL PROVIDER], a _____

By: [CAPITAL PROVIDER], a
_____, its attorney-in-fact

By: [print name], its Manager

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the [TITLE] of [CAPITAL PROVIDER ENTITY NAME], a _____, who is the [TITLE] of [CAPITAL PROVIDER ENTITY NAME], and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Printed Name: _____

**Signature Page – Assessment Contract
Board of County Commissioners**

Board of County Commissioners,
Oklahoma County, Oklahoma

By: _____
Chairman

ATTEST:

County Clerk

ACKNOWLEDGMENT

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Chairman of the Board of County Commissioners, Oklahoma County, Oklahoma, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Printed Name: _____

Notary Public in and for said State
Commissioned in _____

(SEAL)

My commission expires: _____.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT C

PAYMENT SCHEDULE OF ANNUAL INSTALLMENTS