



THE COMMON COUNCIL

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ORDINANCE AMENDING CHAPTER 25.1, COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM, OF THE WINCHESTER CITY CODE

WHEREAS, the City desires to update its Commercial Property Assessed Clean Energy (C-Pace) Financing Program in accordance with the Code of Virginia and recent program guidance; and

WHEREAS, a public hearing was duly held after notice in accordance with Va. Code § 15.2-958.3(G).

NOW, THEREFORE, BE IT ORDAINED, by the Common Council for the City of Winchester, Virginia, that:

1. Chapter 25.1, Commercial Property Assessed Clean Energy (C-Pace) Financing Program, of the Winchester City Code is hereby amended and re-enacted in its entirety as follows:

Chapter 25.1 - COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

ARTICLE I. - IN GENERAL

Sec. 25.1-1. - Purpose.

The purpose of this Chapter is to create a “The City of Winchester Commercial Property Assessed Clean Energy (C-PACE) Financing Program,” to operate in coordination with the statewide C-PACE program, all in accordance with Va. Code § 15.2-958.3 (hereinafter, the “C-PACE Act”). The local and statewide C-PACE programs, working together, will facilitate Loans made by Capital Providers to Property Owners of Eligible Properties to finance Eligible Improvements thereon. Subject to the limitations set forth in this Chapter, the C-PACE Act, or other applicable law, each C-PACE Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by a voluntary special assessment lien on the Property that is the subject of such Loan.

Sec. 25.1-2. - Definitions.

- (a) *Assessment Payment Schedule* means the schedule of installments of C-PACE Payments to be made in the repayment of the C-PACE Loan, which shall be attached as Exhibit B to the C-PACE Program Agreement.

- (b) *Capital Provider* means: (i) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guidelines to originate a C-PACE Loan and its successors and assigns; or (ii) the current holder of a C-PACE Loan.
- (c) *City* means the City of Winchester, Virginia.
- (d) *Clerk's office* means the Office of the Clerk of the Circuit Court of the City of Winchester, Virginia.
- (e) *Commonwealth* means the Commonwealth of Virginia.
- (f) *Council* means the Common Council of the City of Winchester, Virginia.
- (g) *C-PACE* means Commercial Property Assessed Clean Energy.
- (h) *C-PACE Act* means Virginia's "Commercial Property Assessed Clean Energy (C-PACE) financing programs" law, codified at Va. Code § 15.2-958.3.
- (i) *C-PACE Amendment* means an amendment of the C-PACE Lien executed by the Capital Provider, the Property Owner, and the Program Manager, as permitted in the C-PACE Documents, which C-PACE Amendment shall be recorded in the Clerk's Office to evidence each amendment to the C-PACE Loan and the C-PACE Lien.
- (j) *C-PACE Assignment (CP)* means a written assignment by one Capital Provider to another Capital Provider of the C-PACE Payments and/or C-PACE Lien pursuant to the terms of the assignment document.
- (k) *C-PACE Assignment (Locality)* means a written assignment by the City to the Capital Provider to whom the C-PACE Loan is then due, wherein the City relinquishes and assigns its right to enforce the C-PACE Lien to the Capital Provider, substantially in the form attached as Addendum 1 to the C-PACE Lien Certificate.
- (l) *C-PACE Documents* means the C-PACE Program Agreement, Financing Agreement, C-PACE Lien Certificate, C-PACE Assignment (CP), if any, C-PACE Assignment (Locality), if any, C-PACE Amendment, if any, and any other document, agreement, or instrument executed in connection with a C-PACE Loan.
- (m) *C-PACE Lien* or *Lien* means the voluntary special assessment lien levied against the Property as security for the C-PACE Loan.
- (n) *C-PACE Lien Certificate* means the voluntary special assessment lien document duly recorded among the Land Records against an Eligible Property to secure a C-PACE Loan.
- (o) *C-PACE Loan* or *Loan* means a loan from a Capital Provider to finance a Project, in accordance with the Program Guidelines.

- (p) *C-PACE Payment* means the periodic installment payments of the C-PACE Loan by a Property Owner, due and payable to the Capital Provider or Program Administrator as permitted by the C-PACE Act in such amounts and at such times as described in the Assessment Payment Schedule.
- (q) *C-PACE Program* means the program established by the City through this Chapter, in accordance with the C-PACE Act, that in coordination with the Statewide Program facilitates the financing of Eligible Improvements and provides for a C-PACE Lien to be levied and recorded against the Property to secure the C-PACE Loan.
- (r) *C-PACE Program Agreement* means the agreement executed among the Property Owner, the City, the Treasurer and the Capital Provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program and the Property Owner's acknowledgment and consent for the City to impose a voluntary special assessment, record a C-PACE Lien Certificate against the Property Owner's Eligible Property and, if the City so determines, assign the rights to enforce the C-PACE Lien and C-PACE Lien Certificate to the Capital Provider, and if so assigned, also a consent of the Treasurer to such assignment. The C-PACE Program Agreement shall be substantially in the form attached hereto as Appendix A.
- (s) *Delinquent Payment* means any C-PACE Payment that was not paid by a Property Owner in accordance with the C-PACE Documents.
- (t) *Eligible Improvements* means the initial acquisition and installation of any of the following improvements made to Eligible Properties:
1. Energy efficiency improvements;
 2. Water efficiency and safe drinking water improvements;
 3. Renewable energy improvements;
 4. Resiliency improvements;
 5. Stormwater management improvements;
 6. Environmental remediation improvements; and
 7. Electric vehicle infrastructure improvements.

Eligible Improvements may be made to both existing Properties and new construction, as further prescribed in this Chapter and the Program Guidelines. Eligible Improvements shall include types of authorized improvements added by the General Assembly to the C-PACE Act after the date of adoption of this Chapter, without need for a conforming amendment of this Chapter. In addition to the elaboration on the types of Eligible Improvements provided in Sec. 25.1-4(a), below, a Program Administrator may include in

its Program Guidelines or other administrative documentation definitions, interpretations, and examples of these categories of Eligible Improvements.

- (u) *Eligible Property or Property* means all assessable commercial real estate located within the City, with all buildings located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, excluding: (i) a residential dwelling with fewer than five (5) units, and (ii) a residential condominium as defined in Va. Code § 55.1-2100. Common areas of real estate owned by a cooperative or a property owners' association described in Va. Code Title 55.1, Subtitle IV (§ 55.1-1800 *et seq.*), that have a separate real property tax identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE Program.
- (v) *Financing Agreement* means the written agreement, as may be amended, modified, or supplemented from time to time, between a Property Owner and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements. The Financing Agreement may contain any lawful terms agreed to by the Capital Provider and the Property Owner.
- (w) *Land Records* means the Land Records of the Clerk's Office.
- (x) *Lender Consent* means a written subordination agreement executed by each mortgage or deed of trust lienholder with a lien on the Property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or deed of trust liens.
- (y) *Loan Amount* means the original principal amount of a C-PACE Loan.
- (z) *Locality Agreement* means the Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement between Virginia Energy and the City, pursuant to which the City elects to participate in the Statewide Program. The Locality Agreement shall be substantially in the form attached hereto as Appendix B.
- (aa) *Program Administrator* means the private third party retained by Virginia Energy to provide professional services to administer the Statewide Program in accordance with the requirements of the C-PACE Act, this Chapter, the Locality Agreement, and the Program Guidelines.
- (bb) *Program Fee(s)* means the fee(s) authorized by the C-PACE Act and charged to participating Property Owners to cover the costs to design and administer the Statewide Program, including, without limitation, compensation of the Program Administrator. While Capital Providers are required to service their C-PACE Loans, if a Capital Provider does not do so and the Program Administrator assumes the servicing responsibility and charges a servicing fee, the servicing fee shall also be included among the Program Fees.

- (cc) *Program Guidelines* means a comprehensive document setting forth the procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements applicable to the governance and administration of the Statewide Program.
- (dd) *Program Manager* means the City Manager or such person designated in writing by the City Manager to: (i) supervise the City's C-PACE Program and participation in the Statewide Program; (ii) act as liaison with the Program Administrator; and (iii) advise the Program Administrator as to who will sign the C-PACE Documents to which the Locality is a party on the Locality's behalf. If the employee of the City who customarily signs agreements for the Locality is not the person designated as Program Manager, then references in this Ordinance and in the C-PACE Documents to the Program Manager signing certain C-PACE Documents on behalf of the Locality shall be construed to also authorize such customary signatory for the City to execute such C-PACE Documents.
- (ee) *Project* means the construction or installation of Eligible Improvements on Eligible Property.
- (ff) *Property Owner* means: (i) the Property Owner(s) of Eligible Property who voluntarily obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guidelines; or (ii) a successor in title to the Property Owner.
- (gg) *Property Owner Certification* means a notarized certificate from Property Owner, certifying that: (i) Property Owner is current on payments on Loans secured by a mortgage or deed of trust lien on the Property and on real estate tax payments; (ii) that the Property Owner is not insolvent or in bankruptcy proceedings; and (iii) that the title of the Property is not in dispute, as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the Program Administrator and Capital Provider.
- (hh) *Statewide Program* means the statewide C-PACE financing program sponsored by Virginia Energy, established to provide C-PACE Loans to Property Owners in accordance with the C-PACE Act, this Chapter, the Locality Agreement, the C-PACE Documents, and the Program Guidelines.
- (ii) *Treasurer* means the Treasurer of the City, or if the City abolishes the officer of Treasurer, the official executing the tax collection duties that would otherwise be carried out by the Treasurer.
- (jj) *Useful Life* means the normal operating life of the fixed asset.
- (kk) *Virginia Code or Va. Code* means the Code of Virginia of 1950, as amended.
- (ll) *Virginia Energy* means the Virginia Department of Energy.

Sec. 25.1-3. - Effective date.

This Chapter shall become effective immediately following its adoption.

ARTICLE II. - PROGRAM STRUCTURE

Sec. 25.21-4. - C-PACE Program; Eligible Improvements.

(a) *C-PACE Program.* The C-PACE Program shall be available throughout the City, provided that the Property Owner, the Property, the proposed Eligible Improvements, the Capital Provider, and the principal contractors all qualify for the Statewide Program. The following types of Eligible Improvements may be financed with a C-PACE Loan:

1. Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof or green roof systems, and/or weather-stripping), or other capital improvements or systems which result in the reduction of consumption of energy over a baseline established in accordance with the Program Guidelines;
2. Water usage efficiency and safe drinking water improvements (e.g., recovery, purification, recycling, and other forms of water conservation) or other capital improvements or systems which result in the reduction of consumption of water over a baseline established in accordance with the Program Guidelines;
3. Renewable energy production facilities (e.g., solar photovoltaic, fiber optic solar, solar thermal, wind, wave and/or tidal energy, biomass, combined heat and power, geothermal and fuel cells), whether attached to a building or sited on the ground, and the storage and/or distribution of the energy produced thereby, whether for use on-site or sale or export to a utility or pursuant to a power purchase agreement with a non-utility purchaser;
4. Resiliency improvements which increase the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:
 - a. Flood mitigation or the mitigation of the impacts of flooding;
 - b. Inundation adaptation;
 - c. Natural or nature-based features and living shorelines, as defined in Va. Code § 28.2-104.1;
 - d. Enhancement of fire or wind resistance, including but not limited to reinforcement and insulation of a building envelope to reduce the impacts of excessive heat or wind;
 - e. Microgrids;

- f. Energy storage; and
 - g. Enhancement of the resilience capacity of a natural system, structure, or infrastructure;
 - 5. Stormwater management improvements that reduce onsite stormwater runoff into a stormwater system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of stormwater;
 - 6. Environmental remediation improvements, including but not limited to:
 - a. Improvements that promote indoor air and water quality;
 - b. Asbestos remediation;
 - c. Lead paint removal; and
 - d. Mold remediation;
 - e. Soil or groundwater remediation;
 - 7. Electric vehicle infrastructure improvements, such as charging stations;
 - 8. Construction, renovation, or retrofitting of a Property directly related to the accomplishment of any purpose listed in subsections 1–8 above, whether such Eligible Improvement was erected or installed in or on a building or on the ground; it being the express intention of the City to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; and
 - 9. Any other category of improvement: (i) approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the Statewide Program, in accordance with the C-PACE Act, including amendments thereto which authorize additional types of Eligible Improvements; or (ii) added by the General Assembly to the C-PACE Act after the date of adoption of this Chapter, without need for a conforming amendment of this Chapter. In addition, a Program Administrator may include in its Program Guidelines or other administrative documentation definitions, interpretations, and examples of these categories of Eligible Improvements.
- (b) *Use of C-PACE Loan proceeds.* The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to Eligible Improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), program fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.

- (c) *Program applications; prioritization.* The Program Administrator shall make available the Statewide Program's program application process, to provide for the review and approval of proposed Eligible Improvements and C-PACE Documents. Program applications will be processed by the Statewide Program in accordance with the eligibility requirements and procedures set forth in the Program Guidelines.

Sec. 25.1-5. - C-PACE Loan requirements; Program Fees; reporting; Program Administrator; Program Guidelines.

- (a) *Source of Loans.* C-PACE Loans shall be originated by Capital Providers. The City and/or its respective governmental entities or authorities shall have no obligation to originate or guarantee any C-PACE Loans.
- (b) *C-PACE Loan Amount thresholds.* The minimum Loan Amount that may be financed for each Project is Fifty Thousand Dollars (\$50,000.00). There is no maximum aggregate amount that may be financed with respect to an Eligible Property, except as stipulated in the Program Guidelines. There shall be no limit on the total value of all C-PACE Loans issued under the C-PACE Program.
- (c) *C-PACE Loan refinancing or reimbursement.* The Program Administrator may approve a Loan application submitted within two (2) years of the City's issuance of a certificate of occupancy or other evidence that the Eligible Improvements comply substantially with the plans and specifications previously approved by the City and that such Loan may refinance or reimburse the Property Owner for the total costs of such Eligible Improvements.
- (d) *C-PACE Loan interest.* The interest rate of a C-PACE Loan shall be as set forth in the C-PACE Documents.
- (e) *C-PACE Loan term.* The term of a C-PACE Loan shall not exceed the weighted average Useful Life of the Eligible Improvements, as determined by the Program Administrator.
- (f) *Apportionment of costs.* All of the costs incidental to the financing, administration, collection, and/or enforcement of the C-PACE Loan shall be borne by the Property Owner.
- (g) *Financing Agreements.* Capital Providers may use their own Financing Agreements for C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this Chapter, the C-PACE Act, or the C-PACE Program Agreement. To the extent of any conflict, the C-PACE Act, this Chapter, and the C-PACE Program Agreement, in that order, shall prevail and govern the C-PACE Loan.
- (h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program, Property Owner and Capital Provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for participation in the C-PACE Program. The

Program Manager is authorized to approve the C-PACE Loan and execute the C-PACE Program Agreement on behalf of the City without further action by the Common Council. The Treasurer is also authorized to execute the C-PACE Program Agreement without further action by the Common Council. The C-PACE Program Agreement shall be binding upon the parties thereto and their respective successors and assigns until the C-PACE Loan is paid in full. The Program Administrator may modify the C-PACE Program Agreement as necessary to further the Statewide Program's purpose and to encourage Program participation, so long as such modifications do not conflict with the Program Guidelines, this Chapter, the Locality Agreement, or the C-PACE Act.

- (i) *Repayment of C-PACE Loan; collection of C-PACE Payments.* C-PACE Loans will be repaid by the Property Owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment Payment Schedule, the C-PACE Documents and Program Guidelines. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a Capital Provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator. Nothing herein shall prevent the Capital Provider or the Program Administrator from directly billing and collecting the C-PACE Payments from the Property Owner to the extent permitted by the C-PACE Act or other applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default thereunder is governed by Section 25.1-6(e).
- (j) *C-PACE Loan assumed.* A party which acquires a Property which is subject to a C-PACE Lien, whether it obtained ownership of the Property voluntarily or involuntarily, becomes the Property Owner under the C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay all remaining unpaid C-PACE Payments which are due and which accrue during such successor Property Owner's period of ownership. Only the current C-PACE Payment and any Delinquent Payments, together with any penalties, fees, and costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.
- (k) *Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided that the Capital Provider shall: (i) notify the Property Owner and the Program Administrator of the transfer prior to the billing date of the next C-PACE Payment due, and within thirty (30) days if the C-PACE Loan is serviced by the Program Administrator; (ii) record a C-PACE Assignment (CP) among the Land Records; and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the Property Owner, the City, and the Program Administrator. Recordation of the C-PACE Assignment (CP) shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the C-PACE Documents.

- (l) *Program Fees.* The Statewide Program is self-financed through the Program Fees charged to participating Property Owners, together with any funds budgeted by the General Assembly to support the Statewide Program. The Program Fees are established to cover the actual and reasonable costs to design and administer the Statewide Program, including the compensation of a third-party Program Administrator. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fees may be changed by the Program Administrator from time to time and shall only apply to C-PACE Loans executed after the date the revised fees are adopted.
- (m) *Locality Agreement.* The City shall opt into the Statewide Program by entering into the Locality Agreement, adopting the Statewide Program as the City's own C-PACE Program. In accordance with the C-PACE Act, opting into the C-PACE Program shall not require the City to conduct a competitive procurement process. The Program Manager is authorized to execute the Locality Agreement on behalf of the City without further action by the Common Council.
- (n) *Program Guidelines.* The Program Administrator, under the direction of and in consultation with Virginia Energy, has designed the Program Guidelines to create an open, competitive, and efficient C-PACE Program. The Program Administrator may modify the Program Guidelines from time to time, provided such amendments are: (i) consistent with the C-PACE Act; and (ii) approved by Virginia Energy before taking effect.
- (o) *Indemnification.* The Program Administrator shall indemnify, defend and hold the City harmless against any claim brought against the City or any liability imposed on the City as a result of any action or omission to act by the Program Administrator.

Sec. 25.1-6. - Levy of assessment; recordation; priority; amendment; enforcement and collection costs.

- (a) *Levy of voluntary special assessment lien.* Each C-PACE Loan made under the C-PACE Program shall be secured by a voluntary special assessment lien (i.e., a C-PACE Lien) levied by the City against each Property benefitting from the Eligible Improvements financed by such C-PACE Loan. The C-PACE Lien shall be in the Loan Amount, but shall secure not only the principal of the C-PACE Loan, but also all interest, delinquent interest, late fees, penalties, Program Fees, and collection costs, including attorneys' fees and costs, payable in connection therewith.
- (b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien shall be evidenced by a C-PACE Lien Certificate in the Loan Amount, but shall also expressly state that it also secures all interest, delinquent interest, late fees, other types of fees, penalties, and collection costs, including attorneys' fees and costs, payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit. The Program Manager is hereby authorized to, and shall promptly, execute the C-PACE Lien Certificate on behalf of the City and deliver it to the Capital Provider, without any further action by the Common Council. Upon the full execution of the C-PACE

Documents and funding of the C-PACE Loan, the Capital Provider shall cause the recordation of the C-PACE Lien Certificate in the Land Records.

- (c) *Priority.* The C-PACE Lien shall have the same priority as a real property tax lien against real property, except that it shall have priority over any previously recorded mortgage or deed of trust lien on the Property only if prior to the recording of the C-PACE Lien: (i) Property Owner has obtained a written Lender Consent, in a form and substance acceptable to the holder of such prior mortgage or deed of trust in its sole and exclusive discretion, executed by such lienholder and recorded with the C-PACE Lien Certificate in the Land Records; and (ii) prior to the recording of the C-PACE Lien Certificate, Property Owner has delivered an executed Property Owner Certification to the City in connection with the C-PACE Loan closing. Only the current C-PACE Payment and any Delinquent Payments shall constitute a first lien on the Property. The C-PACE Lien shall run with the land and that portion of the C-PACE Lien under the C-PACE Program Agreement that has not yet become due shall not be eliminated by foreclosure of a real property tax lien.
- (d) *Amendment of lien.* Upon written request by a Capital Provider in accordance with the Program Guidelines, the Program Manager, without any further action by the Common Council, shall join with the Capital Provider and the Property Owner in executing a C-PACE Amendment of the C-PACE Loan and the C-PACE Lien after the closing of a C-PACE Loan. The C-PACE Amendment shall be recorded in the Land Records.
- (e) *Enforcement and collection costs.* In the event of Property Owner's default under the terms of the C-PACE Documents, the City, acting by and through the Treasurer, or their designee, may enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4, of the Virginia Code. If the City elects not to enforce the C-PACE Lien, which election shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City, acting by and through the Treasurer, shall, within fifteen (15) days of the City's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, of the Virginia Code, including the institution of suit in the name of the City and its Treasurer, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in

the name of the City and its Treasurer, shall have the status of “Special Counsel to the City and its Treasurer” and an “attorney employed by the governing body,” and possess all the rights and powers of an attorney employed under Va. Code §§ 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government and/or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4, of the Virginia Code. The City, on its behalf and on behalf of the Treasurer, waives its right to require such legal counsel to post the optional bond described in Va. Code § 58.1-3966. All collection and enforcement costs and expenses, including legal fees and costs, interest, late fees, other types of fees, and penalties charged by the City or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall: (i) be added to the Delinquent Payments being collected; (ii) become part of the aggregate amount sued for and collected; (iii) be added to the C-PACE Loan; and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property’s sale, in accordance with Va. Code §§ 58.1-3974 and 58.1-3975.

Sec. 25.1-7. - Role of the City; limitation of liability.

Property Owners and Capital Providers participate in the C-PACE Program and the Statewide Program at their own risk. By executing the C-PACE Documents, including the C-PACE Program Agreement, or by otherwise participating in the C-PACE Program and the Statewide Program, the Property Owner, Capital Provider, contractor, or other party or participant acknowledge and agree, for the benefit of the City and as a condition of participation in the C-PACE Program and the Statewide Program, that: (i) the City undertakes no obligations under the C-PACE Program and the Statewide Program, except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Property Owner, the City has no obligation to use City funds to make C-PACE Payments to any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Property Owner and Capital Provider; (iii) no C-PACE Loan, C-PACE Payment, C-PACE Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this Chapter shall be backed by the credit of the City, the Commonwealth, or its political subdivisions, including, without limitation, City taxes or other City funds; (iv) no C-PACE Loan, C-PACE Payment, C-PACE Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this Chapter shall constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction; (v) the City has not made any representations or warranties, financial or otherwise, concerning a Property Owner, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the City makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any C-PACE Document, or any assignment or amendment thereof; (vii) the City assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; (viii) each Property Owner or

Capital Provider shall, upon request, provide the City with any information associated with a Project or a C-PACE Loan that is reasonably necessary to confirm that the Project or C-PACE Loan satisfies the requirements of the Program Guidelines; and (ix) each Property Owner, Capital Provider, or other participant under the C-PACE Program, shall comply with all applicable requirements of the Program Guidelines, C-PACE Act, and this Chapter.

Sec. 25.1-8. - Severability.

The provisions of this Chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid, or that the application of any part of this Chapter or provision to any person or circumstance is invalid, the remaining provisions of this Chapter shall not be affected by that decision and continue in full force and effect.

2. The Appendices attached to this Ordinance are incorporated by reference.

Appendix A – C-PACE Program Agreement

Appendix B – Locality Agreement

Appendix C – Lien Assignment

APPENDIX A

COMMERICAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the “Agreement”) is made and entered into as of the date it is fully executed (the “Effective Date”), by and among the **CITY OF WINCHESTER, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “City”); the **TREASURER OF THE CITY OF WINCHESTER** (the “Treasurer”); _____, a [*state of organization*] [*type of business entity*] (the “Property Owner”); and _____, a [*state of organization*] [*type of business entity*] (the “Capital Provider”), and their respective successors and assigns (collectively, the “Parties”).

RECITALS:

WHEREAS, § 15.2-958.3 of the Virginia Code (the “C-PACE Act”), authorizes the creation of a statewide Commercial Property Assessed Clean Energy (“C-PACE”) Program (the “Statewide Program”), sponsored by Virginia Energy and managed by the Virginia PACE Authority, its selected program administrator (the “Program Administrator”), and authorizes Virginia localities to opt into the Statewide Program instead of establishing a stand-alone C-PACE Program for the locality; and

WHEREAS, the Statewide Program facilitates Capital Providers making C-PACE Loans to Property Owners to enable the Property Owners to make Eligible Improvements to Eligible Properties; and

WHEREAS, each C-PACE Loan is secured by a Property Owner’s voluntary grant of a C-PACE Lien on an Eligible Property to the locality in which the Eligible Property is located; and

WHEREAS, the City has determined to enable Property Owners to obtain C-PACE Loans for Eligible Improvements located on Eligible Properties in the City by causing the City to opt into the Statewide Program, adopting the Statewide Program as the City’s own C-PACE Program, and to implement such determination, the Common Council of the City has adopted Chapter 25.1 of the Code of the City (the “Ordinance”); and

WHEREAS, pursuant to the C-PACE Act, the Ordinance, a Locality Agreement between Virginia Energy and the City and the Program Guidelines, the Parties are required to enter into a written agreement specifying the terms and conditions for participating in the Statewide Program;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and to implement the purposes of the C-PACE Act and the Ordinance, the Parties hereby agree as follows:

Section 1 - Definitions.

Unless otherwise defined herein, capitalized terms in this Agreement shall have the meanings given them in the Ordinance.

Section 2 – Representations and Covenants.

(a) Property Owner represents and covenants that it is the fee simple record owner of the Eligible Property more particularly described in Exhibit A hereto (the “Property”).

(b) Property Owner represents and covenants that (i) it has applied to participate in the Statewide Program, (ii) the Program Administrator has given notice to the City of its approval of Property Owner’s application for C-PACE financing and (iii) desires to obtain a C-PACE Loan to construct or install certain Eligible Improvements on the Property.

(c) Property Owner represents and covenants that it has entered or will enter into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. The Assessment Payment Schedule for the C-PACE Loan is set forth in Exhibit B hereto. Property Owner and Capital Provider acknowledge and agree that the Financing Agreement shall include only those costs and fees (including Program Fees) for which a C-PACE Lien may be imposed under the C-PACE Act and the Ordinance.

(d) The Parties acknowledge and agree that should Property Owner default on the C-PACE Loan, the City, acting through its Treasurer, may enforce the C-PACE Lien for the benefit of Capital Provider according to the C-PACE Documents, the C-PACE Act, the Locality Agreement, and the Ordinance. If the City, acting through its Treasurer, determines not to enforce the C-PACE Lien, which determination shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner’s default under the terms of the C-PACE Documents, then the City shall, within fifteen (15) days of the City’s determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality), as set forth in Appendix C, and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan’s closing, regardless of whether the C-PACE Loan is then in default.

(e) Property Owner and Capital Provider confirm that they have obtained Lender Consents for each deed of trust or mortgage lien against the Property.

Section 3 – Program Terms and Conditions.

(a) C-PACE Loan. The Capital Provider will provide financing for the Property Owner’s Eligible Improvements in accordance with the C-PACE Documents.

(b) Program Fee(s): Property Owner agrees that Program Fee(s) will be [paid directly by Property Owner to the Program Administrator][deducted from C-PACE Loan proceeds at

funding and remitted by Capital Provider to the Program Administrator][deducted from C-PACE Payments and remitted by Capital Provider to the Program Administrator] in accordance with the C-PACE Documents and the Program Guidelines and in the amount of \$_____, as follows:

(c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to Property Owner under the Program, Property Owner hereby requests and authorizes the City to levy a C-PACE Lien against the Property in the Loan Amount, together with all interest, delinquent interest, late fees, other types of fees, penalties, and collection costs (including attorneys' fees and costs) payable in connection therewith. To evidence the C-PACE Lien, Property Owner requests that the City execute a C-PACE Lien Certificate that will be recorded in the Land Records of the City, which C-PACE Lien Certificate shall state that it secures both the Loan Amount and also all interest, delinquent interest, late fees, other types of fees, penalties, Program Fees and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit.

(d) C-PACE Payments. The C-PACE Loan is due and payable to the Capital Provider [or the City for the benefit of the Capital Provider] as set forth in the Assessment Payment Schedule and _____ remitted _____ as _____ follows: _____

Once the C-PACE Loan, including all accrued interest (both current and delinquent), late fees, other types of fees, penalties, collection costs, and Program Fees, has been satisfied and paid in full, Capital Provider and the City, acting at the request and direction of Capital Provider (which shall certify such payment in full to the City), shall execute a joint release of the C-PACE Lien Certificate, and the Capital Provider shall record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the City.

(e) Remittance of C-PACE Payments to Capital Provider: The C-PACE Loan shall be serviced by the Capital Provider, and Property Owner's C-PACE Payments shall be paid directly to its Capital Provider. The foregoing notwithstanding, if for any reason Property Owner's C-PACE Payments are payable to the Program Administrator or the City or its Treasurer, then the party receiving such C-PACE Payments shall remit all such payments to the Capital Provider within thirty (30) days of receipt, subject, if applicable, to the deduction and remittance of the Program Fees to the Program Administrator as set forth in Section 3(b), above, the C-PACE Documents and the Program Guidelines.

(f) Maintenance of Assessment. The City agrees to maintain and continue the C-PACE Lien on the Property for the benefit of Capital Provider until the C-PACE Loan, including all principal, interest, fees, other types of fees, penalties, collection costs and Program Fees and other sums due, is paid in full.

(g) Assignment. Capital Provider shall have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider by the execution, delivery, and recordation of a C-PACE Assignment (CP) in the Land Records, provided all of the following conditions are met:

- (1) The C-PACE Assignment (CP) is made pursuant to the requirements of the Ordinance and the Program Guidelines;
- (2) The Program Administrator and Property Owner are notified in writing of the assignment or transfer and provided the address where future C-PACE Payments should be mailed, either at closing, if the assignment occurs then, or at least thirty (30) days before the next Payment is due according to the Assessment Payment Schedule; and
- (3) The assignee or transferee, by operation of the C-PACE Assignment (CP) or otherwise, assumes Capital Provider's obligations under the C-PACE Documents.
- (4) If for any reason C-PACE Payments are being paid to the City or its Treasurer, neither of them shall be obligated to remit C-PACE Payments to a new Capital Provider to which the C-PACE Loan is being assigned until a recorded copy of the C-PACE Assignment (CP) has been provided to the City and its Treasurer at the following address[es]:

City:

Treasurer:

Upon written notice to the Program Administrator and Property Owner of an assignment or transfer of the right to receive the C-PACE Payments that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under the C-PACE Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C-PACE Lien that does not meet all of these conditions is void.

(h) Lien Priority and Enforcement. Pursuant to the C-PACE Act, the Ordinance, and the Program Guidelines:

- (1) Delinquent Payments on the C-PACE Loan will incur interest and penalties as set forth in the C-PACE Documents.
- (2) The C-PACE Lien, together with any penalties and interest thereon:

- (i) has the same priority status as a lien for City real estate taxes;
- (ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the Land Records until the financing secured by the C-PACE Lien and any penalties and interest are paid in full;
- (iii) shall run with the land, and notwithstanding Va. Code § 58.1-3967, any portion of the C-PACE Lien that has not yet become due under the C-PACE Documents is not eliminated by the foreclosure of: (i) a City property tax lien, or (ii) the lien for any past due portion of the C-PACE Loan.
- (iv) In the event of a sale or transfer of the Property by Property Owner, the obligation for the C-PACE Lien and Property Owner's obligations under the C-PACE Documents will be assumed by and transferred to the succeeding owner.

(3) In the event of Property Owner's default under the terms of the C-PACE Documents, the City, acting by and through the Treasurer or their designee, may enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. Capital Provider agrees to cooperate with the City and its Treasurer in its enforcement of the C-PACE Lien by providing all necessary documents and information concerning the delinquent C-PACE Loan as requested by the City Attorney's Office. If the City, acting through its Treasurer or their designee, determines not to enforce the C-PACE Lien itself, which determination shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City, acting by and through the Treasurer or their designee, shall, within fifteen (15) days of the City's determination not to enforce the C-PACE lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality), as set forth in Appendix C, and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Treasurer, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise

the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the City and its Treasurer, shall have the status of "Special Counsel to the City and its Treasurer" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Va. Code §§ 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The City, on its behalf and on behalf of the Treasurer, waives its right to require such legal counsel to post the optional bond described in Va. Code § 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code §§ 58.1-3974 and 58.1-3975.

(4) In a bill in equity for sale of a Property to collect Delinquent Payments, the City will be entitled to recover the Delinquent Payments, late fees, other types of fees, penalties, Program Fees, interest due, and the costs and expenses of collection, including attorney's fees and costs, all as set forth in the C-PACE Documents.

(i) Property Owner's Waiver of Certain Defenses; Confession of Judgment: By executing this Agreement, Property Owner acknowledges and agrees as follows:

- (1) After the C-PACE Lien Certificate is recorded, Property Owner waives the right to contest the Lien on the basis that the improvements funded with the C-PACE Loan are not Eligible Improvements;
- (2) Property Owner waives all defenses, affirmative or otherwise, to any enforcement or collection action brought as a result of Property Owner's default in the payment of the C-PACE Payments due pursuant to the C-PACE Documents;
- (3) To the extent permitted by the Financing Agreement, Property Owner waives all defenses to the imposition of personal liability for corporate officers as permitted under § 58.1-3965(F) of the Virginia Code;
- (4) Property Owner shall provide a confession of judgment if requested by the

Capital Provider.

(j) Written Contract Required by the C-PACE Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by § 15.2-958.3(A)(7) of the C-PACE Act.

(k) Transfer of C-PACE Funded Improvements. Property Owner agrees that all Improvements purchased, constructed, or installed through financing obtained pursuant to the C-PACE Program shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property; provided, however, that if Improvements become obsolete or the Property Owner otherwise determines they need to be replaced with other Improvements of equal or greater value, such Improvements may be removed and other Improvements of equal or greater value installed.

(l) No Cost to City. No provision of this Agreement requires the City to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(m) Term of the Agreement. The term of this Agreement shall commence upon the Effective Date and shall be in full force and effect until the C-PACE Loan has been irrevocably paid in full.

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Property Owner, or any right or remedy of the Capital Provider or the City, Property Owner agrees to indemnify and hold harmless the Capital Provider and the City, their councilmembers, directors, officers, employees, agents, subsidiaries, and affiliates (each, an "Indemnified Party"), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether created by statute or common law, including all costs and expenses, including attorneys' fees, arising from or associated with this C-PACE Loan transaction. This section shall survive the expiration of the Term of this Agreement.

Section 5 - Miscellaneous Provisions.

(a) Construction. This Agreement is to be construed in accordance with and with reference to the C-PACE Act, the Ordinance, the Locality Agreement and the Program Guidelines.

(b) Further Assurances. Property Owner further covenants and agrees to do, execute, and deliver, or cause to be done, executed and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.

(c) Severability. If the C-PACE Act, the Ordinance, the Locality Agreement or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the City or Capital Provider, Property Owner agrees to continue

to make the C-PACE Payments required under the C-PACE Documents and agrees to execute any and all documentation to perfect and enforce the C-PACE Loan as required by the City or Capital Provider. The invalidity of any clause, provision, or section of this Agreement shall not affect any remaining clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.

(d) 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. Electronically transmitted and digitally signed signatures shall have the same force and effect as, and shall be treated as, a “wet ink” original signature.

(e) Notices. All notices, requests, consents, and other communications (collectively, “Notices”) 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:

City of Winchester, Virginia
15 N Cameron St
Winchester, Virginia 22601
Attention: _____

If to the Property Owner:

[Address]

If to the Capital Provider:

[Address]

If to the Program Administrator:

[Address]

Notice by e-mail under this paragraph is only permitted if each party listed above has furnished its respective e-mail address as part of its notice address above. By doing so, each such party agrees, for itself and its successors and assigns, to supply to each of the other Parties any replacement e-mail address within two (2) business days of its adoption, by a permitted means other than e-mail. All Notices are effective when received.

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the Parties.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In any action, in

equity or at law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the City.

(h) Successors and Assigns. This Agreement is binding upon and made for the benefit of the Property Owner, the Capital Provider, the City and its Treasurer, and their respective successors and permitted assigns.

(i) 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.

(j) 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the City, its Treasurer, the Property Owner and the Capital Provider have each caused this Agreement to be executed on the date(s) entered below:

CITY OF WINCHESTER, VIRGINIA

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

TREASURER OF CITY

By: _____
Name: _____
Title: _____
Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

PROPERTY OWNER:

[insert Property Owner's name]

By: _____

Name: _____

Title: _____

Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

CAPITAL PROVIDER:

[insert Capital Provider's name]

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A
Property Description

Exhibit B
Assessment Payment Schedule

(100508678.8)

APPENDIX B

VIRGINIA ENERGY – LOCALITY COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20__, between THE CITY OF WINCHESTER, Virginia, a political subdivision of the Commonwealth of Virginia (the “Locality”), and the Virginia Department of Energy (“Virginia Energy”), a public agency of the Commonwealth of Virginia.

RECITALS

1. Pursuant to § 15.2-958.3. of the Code of Virginia, entitled “Financing clean energy, resiliency, and stormwater management programs” (“C-PACE Act”), Locality has exercised its right to authorize contracts to provide C-PACE loans through the adoption of a C-PACE ordinance (“Ordinance”), attached hereto as Exhibit 1.
2. Pursuant to the C-PACE Act and Ordinance, Locality has agreed to opt into the statewide C-PACE loan program sponsored by Virginia Energy (“Virginia C-PACE Program”) and administered by a competitively selected private program administrator (“Program Administrator”). The current Program Administrator and its contact information are set forth on Exhibit 2 attached hereto.
3. The Virginia C-PACE Program provides the Locality with a uniform process for the application, approval, closing and servicing of C-PACE loans and with outreach and training support to promote the program to property owners. A Locality participating in the Virginia C-PACE Program agrees to adopt the set of legal and administrative documents and to abide by the requirements of the statewide C-PACE Program Guidelines (“Program Guidelines”) attached hereto as Exhibit 3.

NOW THEREFORE, to implement the local C-PACE Ordinance, the Locality hereby opts into the Virginia C-PACE Program sponsored by Virginia Energy and managed and operated by Virginia Energy’s Program Administrator, on the terms set forth hereinbelow and in accordance with the program design detailed in the Program Guidelines.

ARTICLE 1

(a) Term. The term of this Agreement shall commence upon the date the last party executes the Agreement. This Agreement shall remain in full force and effect until either Virginia Energy terminates the Virginia C-PACE Program or the Locality opts out of the Virginia C-PACE Program. Either party may terminate this Agreement at any time upon ninety (90) days’ advance written notice to the other party, provided that the collection of C-PACE Lien payments for C-PACE loans made prior to the termination date shall continue until all C-PACE Lien payments (including the interest, penalties, and fees thereon) have been collected and all such C-PACE loans have been paid in full.

(b) Servicing of C-PACE Loans. C-PACE Loans shall be serviced by their respective capital provider, in accordance with the Ordinance and the Program Guidelines.

(c) Enforcement of C-PACE Liens. The Locality has agreed to **delegate enforcement of the C-PACE Lien to a third party** in accordance with the C-PACE Act, the obligations of which are described in the Ordinance and the Program Guidelines.

(d) Cooperation in Operating C-PACE Program. The Locality shall cooperate with the Program Administrator in the latter's operation of the C-PACE Program in the Locality. This cooperation shall include, but not be limited to the Locality:

(i) designating (A) an employee of the Locality to serve as Program Manager, and if the Program Manager wishes to delegate some or all of the duties assigned to the Program Manager, identifying the Program Manager's designee and promptly communicating the contact information for the Program Manager and any designee to the Program Administrator, and (B) which employee(s) of the Locality will sign documents requiring the Locality's signature for C-PACE Loan closings;

(ii) complying with the review and other periods of time prescribed for the Locality to take a required action specified in the Program Guidelines;

(iii) taking reasonable steps to procure the timely participation of the Locality's Treasurer (or comparable official if the Locality has abolished the office of Treasurer or the Locality's Treasurer is not responsible for the collection of real property taxes) in the processes and procedures described in the Program Guidelines and the Ordinance as involving the Treasurer, it being understood that such processes and procedures are based on the collection of C-PACE Payments in the same manner as real property taxes; and

(iv) in the discretion of the Locality, providing reasonable assistance in jointly promoting the Locality's C-PACE Program to lenders, contractors, and businesses located in, or considering locating in, the Locality.

ARTICLE 2

MISCELLANEOUS PROVISIONS

(a) Model Ordinance. The Locality represents and warrants to Virginia Energy and its Program Administrator that the Ordinance substantially conforms to model ordinance adopted by the Program Administrator for use in the Virginia C-PACE Program and furnished to the Locality.

(b) Non-Assignability. The Locality may not assign or transfer its rights or obligations under this Agreement without prior written consent of Virginia Energy; provided, however, that this paragraph shall not be construed to apply to, or restrict, the assignment of C-PACE Liens in accordance with the Locality's Ordinance and related C-PACE Documents.

(c) Locality Acknowledgments. The Locality acknowledges and agrees that: (i) Virginia Energy has employed the Program Administrator to carry out Virginia Energy's

obligations under this Agreement and the Virginia C-PACE Program generally; (ii) if Virginia Energy replaces the Program Administrator listed on Exhibit 2, then the successor Program Administrator will succeed to the rights, duties and obligations of the Program Administrator, except to the extent specified in Virginia Energy's agreements with such Program Administrators; (iii) for purposes of this Agreement and the Locality's C-PACE program, the Program Administrator shall speak and act for Virginia Energy and that any notices required under the terms of this Agreement to be sent to Virginia Energy shall also be sent to the Program Administrator; (iv) the Program Administrator is made a third party beneficiary of this Agreement, and by accepting the benefits of such status, shall be deemed to have covenanted with the Locality to adhere to and comply with its obligations under the Program Guidelines in administering the Locality's C-PACE Program; and (v) the Program Administrator is entitled to be paid by Property Owners (the Locality having no liability therefor) the Program Fees set forth from time in the Program Guidelines.

(d) Non-waiver; Amendment. Any waiver of any provision of this Agreement must be in writing and mutually agreed to by Virginia Energy and the Locality. Except for a specific provision of this Agreement which is amended, this Agreement shall remain 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.

(e) 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 any of 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.

(f) Counterparts; Scanned and Digital Signatures. 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. Scanned signatures (e.g., a "PDF" document) and digital signatures (e.g., DocuSign) shall have the same force, effect, and validity as an original signature.

(g) Notices. All notices, requests, consents, and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, hand delivered, or overnight delivery service, to the parties, as follows:

If to the Locality:

City of Winchester, Virginia
15 N Cameron St
Winchester, Virginia 22601
Attention: _____

If to Virginia Energy:

817 Washington Building
1100 Bank Street
Richmond, Virginia 23219
Attention: Energy Efficiency and Financing Programs Manager

With a copy to the Program Administrator at the address on Exhibit 2.

Any party may change its notice address by providing the new notice address to the other parties in accordance with this paragraph (g).

(h) Jurisdiction and Venue. This Agreement shall be construed, interpreted, and enforced according to the laws of the Commonwealth of Virginia. Any claim brought in connection with this Agreement must be brought in the Circuit Court of the City of Richmond and the parties consent to its jurisdiction.

(i) Definitions and Captions. Capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Ordinance attached hereto in Exhibit A. 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.

(j) Integration. This Agreement 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.

(j) No Joint Venture, etc. Nothing in this Agreement, and no act of the Locality, Virginia Energy or the Program Administrator, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Locality and Virginia Energy.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the Locality and Virginia Energy have each caused this Agreement to be executed and delivered as of the date set forth above:

THE CITY OF WINCHESTER

By: _____
Name: Daniel Hoffman
Title : City Manager
Date: _____

*[Remainder of the page intentionally left blank;
Signature pages continue]*

[VIRGINIA ENERGY – LOCALITY AGREEMENT
SIGNATURE PAGE FOR VIRGINIA DEPARTMENT OF ENERGY]

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENERGY**

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT 1

COPY OF LOCALITY ORDINANCE

(See attached)

EXHIBIT 2

NAME AND ADDRESS OF PROGRAM ADMINISTRATOR

Virginia PACE Authority
c/o Gather Newport News
700 Tech Center Pkwy, Suite 200
Newport News, VA 23606

Attention: Abigail C. Johnson
Executive Director
Tel: 757-603-3555
abby@virginiapace.com

EXHIBIT 3

PROGRAM GUIDELINES

(See attached)

APPENDIX C

EXEMPT FROM RECORDATION FEES PURSUANT TO VA. CODE § 17.1-266

Prepared By/Return To:

_____, Esq.; VSB # _____
[Address of Assignee's Attorney]

C-PACE LIEN ASSIGNMENT (LOCALITY)

CURRENT PROPERTY OWNER

(Index as a Grantor): _____, a _____

ASSIGNOR (Index as a Grantor): The City of Winchester, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia

ASSIGNEE (Index as a Grantee): _____, a _____
[INSERT ASSIGNEE'S MAILING ADDRESS]

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Winchester, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the "City"), acting herein by its undersigned duly authorized official and by its Treasurer (collectively, "Assignors"), duly authorized under (1) Paragraphs C and E of Section 15.2-958.3 of the Code of Virginia (1950), as amended (the "Virginia Code"), (2) Section 25.1-6(e) of the Code of the City, and (3) a C-PACE Program Agreement dated _____, 20__, among the Assignors, [PROPERTY OWNER NAME] ("Property Owner") and [CAPITAL PROVIDER NAME] ("Assignee"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to Assignors by Assignee, the receipt of which is hereby acknowledged, hereby quitclaims, grants, bargains, sells, conveys, assigns, transfers, and sets over unto Assignee, without any warranties, covenants, or recourse, all of its right, title, and interest in and to that certain C-PACE special assessment lien and the debts secured thereby, together with interest, delinquent interest, late fees, penalties, Program Fees, and collection costs (including attorneys' fees and costs) payable in connection therewith as may be provided by law, levied and recorded by or on the behalf of the City in the Land Records [as Instrument No. _____, on _____, 20__][immediately prior hereto], on property owned on the date hereof by Property Owner and described on **Exhibit A** attached thereto (collectively, the "C-PACE Lien"), to have and to hold the same unto the Assignee, its successor and assigns forever.

Capitalized terms used but not defined in this C-PACE Lien Assignment (Locality) (this “Assignment”) shall have the meaning ascribed to them in Chapter 25.1 of the Code of the City. This Assignment constitutes a “C-PACE Assignment (Locality)” as such term is defined in Sec. 25.1-2(k) of the Code of the City.

By execution of this Assignment, Assignors assign to Assignee, and Assignee assumes, all of the rights at law or in equity, obligations powers and duties as Assignors would have with respect to enforcing the C-PACE Lien if the C-PACE Lien had not been assigned, with regard to precedence and priority of such Lien, the accrual of interest, delinquent interest, late fees, penalties, Program Fees and collection costs (including attorneys’ fees and costs) payable in connection therewith as may be provided by law, pursuant to Virginia Code Section 15.2-958.3, as amended.

This Assignment by Assignors is absolute and irrevocable and Assignors shall retain no interest, reversionary or otherwise, in the C-PACE Lien. The foregoing notwithstanding, however, neither Assignors’ assignment of the C-PACE Lien to Assignee, nor any future reassignment of the C-PACE Lien to future holders of the C-PACE Loan secured by the C-PACE Lien, shall in any way change the status of the C-PACE Lien as a special assessment lien imposed by the City, and the C-PACE Lien shall continue to be enforceable by the then-current holder of the C-PACE Lien in the same manner as the City enforces its lien for real property taxes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

[LOCALITY AND TREASURER SIGNATURE PAGES
FOR ASSIGNMENT OF C-PACE LIEN (LOCALITY)]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of ____, 20__.

ASSIGNORS:

THE CITY OF WINCHESTER, VIRGINIA

By: _____

Name: _____

Title: City Manager

(SEAL)

ATTEST:

City Clerk

Approved as to form:

City Attorney

COMMONWEALTH OF VIRGINIA;
CITY OF WINCHESTER, TO-WIT:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____, on behalf of the City of Winchester, Virginia, a corporate and body politic and governmental subdivision of the Commonwealth of Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. (S)He is personally known to me or provided a _____ as identification.

GIVEN under my hand and seal this _____ day of _____, 20__.

Notary Public

My commission expires: _____

Notary registration number: _____

[TREASURER'S SIGNATURE PAGE FOLLOWS]

TREASURER OF THE CITY OF WINCHESTER,
VIRGINIA

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA;
CITY OF WINCHESTER, TO WIT:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as Treasurer of the City of Winchester, Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. (S)He is personally known to me or provided a _____ as identification.

GIVEN under my hand and seal this _____ day of _____, 20__.

Notary Public

My commission expires: _____
Notary registration number: _____

(100975319.2)

Ordinance No. O-2024-1

ADOPTED by the Common Council of the City of Winchester on this 26 day of March 2024.

Witness my hand and the seal of the City of Winchester, Virginia.



A handwritten signature in black ink, reading "Kerri A. Mellott".

Kerri A. Mellott
Deputy Clerk of the Common Council