

CITY OF FERNLEY
RESOLUTION ~~20-016~~21-009

RESOLUTION ~~AMENDING AND RESTATING TO AUTHORIZE THE CREATION OF~~
~~THE CITY OF FERNLEY COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY~~
~~PROGRAM ESTABLISHED BY R-20-016; TO PROVIDE THE MEANS OF~~
~~FINANCING ONE OR MORE ENERGY EFFICIENCY IMPROVEMENT PROJECTS,~~
~~OR RENEWABLE ENERGY PROJECTS, WATER EFFICIENCY IMPROVEMENT~~
~~PROJECTS OR RESILIENCY PROJECTS FOR QUALIFYING COMMERCIAL OR~~
~~INDUSTRIAL REAL PROPERTY; TOGETHER WITH OTHER MATTERS PROPERLY~~
~~RELATING THERETO~~

WHEREAS, on August 5, 2020, The City of Fernley previously adopted a Resolution to authorize the creation of the City of Fernley Commercial Property Assessed Program (Resolution 20-016) (the "Existing Program"); and

WHEREAS, On June 8, 2021, Governor Sisolak signed into law Senate Bill 283 which amends Chapter 271 of the Nevada Revised Statutes ("NRS") CPACE enabling legislation; and

WHEREAS, the City of Fernley is becoming a hub of development within Northern Nevada; and

WHEREAS, the construction of new energy efficient buildings with renewable energy and other energy conservation systems that exceed current building energy code requirements will enhance the tax base of the city and make such buildings more attractive to owners and tenants, and thereby promoting employment and economic growth; and

WHEREAS, NRS Chapter 271 at Sections 271.6312-6325, as amended by SB 283 (collectively, the "Act") of the Nevada Revised States ("NRS") enables a Nevada local government Municipality, without an election, to adopt a resolution whereby the governing body of the municipality specifies the procedure for the creation and administration of a district, which may constitute the entire jurisdictional boundaries of the municipality, with the purpose of financing to finance one or more Qualifying energy improvement projects or renewable energy projects with willing owners of Qualifying existing and new Commercial or Industrial Real Property ("District"); a program generally known as a "Commercial Property Assessed Clean Energy Program" or "C-PACE Program", and

WHEREAS, the financing under such a program would be secured by the placement of a voluntary assessment against the participating commercial or industrial real property, recorded with the Lyon County Assessor's Office by the City Clerk of the City of Fernley (hereinafter "City Clerk"), the installment of payments of which will be due and payable from the property owner in the amounts and at the times as are described in an assessment and financing agreement and the assessment lien will be on par with the lien of real estate taxes and superior to all other liens; shall run with the title to the commercial or industrial real property; and shall not be subject to extinguishment by the sale of the commercial or industrial real property on account of the non-payment of real estate taxes, all of which gives rise to such program generally known as a "Commercial Property Assessed Clean Energy Program" or "C-PACE Program"; and

Commented [BJM1]: Daphne, SB 283 introduced new defined terms and/or edits to previous statute defined terms. The edits included in this redline are largely to update the Resolution to reflect/be consistent with the SB 283 defined terms and language. Those SB 283 terms/language edits flow thru to the majority of the Resolution.

For some unknown reason I was unable to open the Word version of the Resolution edits your sent. I was able to open the PDF file you sent including redlines and convert that PDF file to this Word document where I included finale edit suggestions. Such conversion to PDF to Word on my end introduced some formatting issues with respect to the sidebar comments, etc. I'm hoping you will be able to correct those in your final review and acceptance of these edits.

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WHEREAS, the Fernley City Council (hereinafter "Council") hereby finds and determines that the improvements to be made and financed under a C-PACE Program with the city may reasonably be expected to (i) renew and revitalize existing commercial and industrial properties; (ii) enhance the value of both existing and new commercial and industrial properties; (iii) improve the marketability and profitability of such improved properties (iv) generate local construction jobs; (v) lead to the creation of additional jobs by the businesses which thereby become more profitable; (vi) improve air quality; (vii) and support progress towards the city's goal to encourage green building, reduce climate pollution, and expand the clean energy economy; and (viii) strengthen the local economy, and that accordingly, the adoption of a resolution to amend and restate the City's create a C-PACE Program for the City of Fernley is in the public interest; and.

WHEREAS, the City Council finds that creation of a District within the boundaries of the City serves the public purposes of resource conservation, reducing emissions and increasing resiliency of the community pursuant to NRS 271.6315(1)(a).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FERNLEY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1

PROGRAM CREATION

1.1 The City of Fernley, Nevada (hereinafter "City"), a Nevada municipal corporation hereby amends and restates the Existing Program effective as of the Effective Date and creates the "Fernley C-PACE Program;" by adoption of this Resolution.

SECTION 2

DEFINITIONS

2.1 Capitalized terms used herein but not otherwise defined have the meanings given such terms in the Act.

2.2 **"Assessment" or "Asses" and Assessment Lien"** means a voluntary lien created by the City assessment, or the levy thereof, against any tract specifically benefited by an Energy Efficiency Improvement Project or Renewable Energy Project, any Qualified Improvement Project, to defray wholly or in part the cost of such the project, which Assessment shall be made on a Qualifying Commercial or Industrial Real Property, as may be determined by city, but in no event shall any Assessment exceed the Estimated Maximum Benefit to the tract assessed or its reasonable market value, as determined by City or its Program Administrator, in an existing structure or new construction, which lien Assessment shall be made on a Qualifying Commercial or Industrial Real Property, as secured by a Recorded Notice of Assessment and Assessment Lien, and which shall not be subject to acceleration or extinguishment by the sale of any property on account of the nonpayment of general taxes, and is prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes attached to the tract pursuant to the provisions of NRS 361.450.

2.23 **"Assessment and Financing Agreement"** means a written agreement, between a property owner, capital provider and the City, setting forth the applicable terms of and arrangements for the C-PACE Financing for an eligible Energy Efficiency Improvement Project and/or a Renewable Energy Project, means the voluntary contract, signed by the City and the pProperty oOwner, whereby the pProperty oOwner agrees to an aAssessment and aAssessment lLien imposed and rRecorded on its Tract their property as security for repayment of C-PACE fFinancing received pursuant to a Financing Agreement for Qualified Improvements.

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"Capitalization Rate" (or "Cap Rate") means the ratio between a property's annual net operating income and its value, e.g. the original capital cost or its current market value.

~~2.3~~ **Assessment Lien** means the document created by the assessment agreement between the City and the property owner and runs with the land and is not subjected to acceleration or extinguishment by the sale of any property on account of the nonpayment of general taxes, and is prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes attached to the tract pursuant to the provisions of NRS 361.450.

~~2.4~~ **Capital Provider** means any private entity or the designee, successor or assign of the private entity that provides direct financing or refinancing for a Qualified Improvement Project pursuant to the Act.

~~2.5~~ **City** means the City of Fernley, Nevada, a Nevada municipal corporation.

~~2.6~~ **City Program Manager** means an employee of City designated as the Program Manager appointed to run the Fernley C-PACE Program and act as liaison with the Program Administrator.

~~2.7~~ **C-PACE** means Commercial Property Assessed Clean Energy.

~~2.8~~ **C-PACE Amendment** means a certificate of amendment to levy and lien of C-PACE Assessment, executed by a Qualified Capital Provider without consent from property owner, as permitted in the C-PACE Assessment and Financing Agreement, which C-PACE Amendment shall be recorded in the official records of the Lyon County Recorder's Office to evidence each amendment to the C-PACE Assessment and the C-PACE Lien, a form of which C-PACE Amendment is attached to the C-PACE Assessment and Financing Agreement.

~~2.89~~ **C-PACE Assignment** means a written assignment of the Notice of Assessment and Assessment Lien executed by the City for the benefit of the a Qualified Capital provider that provided the financing for the Qualified Improvement Project, from time to time without consent from property owner, which shall be recorded, to evidence the in the official records of the Lyon County Recorder's Office by the City Clerk, to evidence City's assignment of the Assessment and Assessment Lien, a Qualified Capital Provider's assignment of the C-PACE Financing and C-PACE Lien, a form of which C-PACE C-PACE Assignment is attached to the Program Guide C-PACE Assessment and financing Agreement.

"C-PACE Certificate" means a certificate of levy and lien of C-PACE Assessment, which shall (i) be executed by property owner, qualified Capital Provider, and the City; (ii) include an Installment Payments schedule; and (iii) be recorded in the official records of the Lyon County Recorder's Office by the City Clerk, to evidence the C-PACE Lien, a form of which C-PACE Certificate is attached to the C-PACE Assessment and Financing Agreement.

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“C-PACE Lien” means the voluntary Assessment lien levied against a Qualifying Commercial or Industrial Real Property as security for the C-PACE Financing, which (i) is of equal priority with the Real Estate Tax lien, and (ii) as to the current C-PACE Installment Payment that is due and any Delinquent C-PACE Payments, is senior to: (a) all other special Assessment liens; (b) all previously recorded senior liens, provided a Lender Consent is recorded for each such senior lien; (c) shall run with the title to the property and shall not be extinguished by a foreclosure; and (iv) is evidenced by the C-PACE Certificate, as may be amended and assigned from time to time in accordance with this Resolution and the C-PACE Assessment and Financing Agreement.

2.910 “**Delinquent C-PACE Payment**” means any C-PACE Installment Payment of the Financing Amount that was not paid by the Property Owner when due, which shall include without limitation, all interest, late fees, and penalties incurred pursuant to the C-PACE Assessment and Financing Agreement.

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2.10 “Effective Date” means { }, i.e., the date this Resolution goes into effect.

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1 “**Energy Audit**” means a formal evaluation of the energy consumption of a permanent building or any structural improvement to Qualifying Commercial or Industrial Real Property that is consistent with (i) the requirements of ASTM International – Standard E2797 – *Standard Practice for Building Energy Performance Assessment for a Building Involved in a Real Estate Transaction*; the ASHRAE Level 2 or 3 guidelines for Energy Audits or any comparable energy assessment guidelines, as applicable. For a Renewable Energy Project, the project must be determined to be feasible through a written feasibility study conducted by a Qualified Service Company.

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2.112 “**Energy Efficiency Improvement Project**” means the installation or modification of one or more energy efficiency improvements that decreases or supports the decrease of energy consumption or demand for energy through the use of energy efficiency technologies, products or activities and incidentals which are necessary, useful or desirable for any such improvements and which installation or modification has a useful life of not less than and incidentals which are necessary, useful or desirable for any such improvements and which installation or modification has a useful life, as estimated by the Program Administrator based on industry best practice, of not less than ten (10) years.

“Estimated Maximum Benefit” means the estimated maximum benefit to the tract from the installation of a qualifying Energy Efficiency Improvement Project and/or a Renewable Energy Project may not exceed the market value, e.g. the City’s assessed value or appraised value of the tract. Estimated Maximum Benefit is the ratio of the estimated average annual savings, from the installation or improvement, over the property Capitalization Rate as determined by City or the Program Administrator.

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2.123 “**Financing**” means the C-PACE financing or refinancing described in the Assessment and Financing Agreement and Financing Agreement, which is financed by the Qualified Capital Provider for one or more Qualified Improvement Projects on Qualifying Commercial or Industrial Real Property.

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2.143 “ **Financing Agreement**” means the contract pursuant to which a pProperty eOwner or lessee, as applicable, agrees to repay the Qualified eCapital pProvider for the fFinancing Amount or refinancing a qualified improvement project, including, without limitation, any finance charges, fees, debt servicing, interest, penalties and any other provision relating to the treatment of prepayment or partial payment, billing, collection and enforcement of the aAssessment and Assessment lLien securing the fFinancing.

2.145 “ **Financing Amount**” means the aggregate amount of the Financing or Refinancing, including interest, any finance charges, fees, debt servicing, and costs and penalties as are described in the Assessment and Financing Agreement.

2.156 “ **Financing Term**” means the term of the Financing or Refinancing, as described in the Assessment and Financing Agreement, which shall not exceed the weighted average effective useful life of the qualifying Energy Efficiency Improvement Project and/or Renewable Energy Project improvements as determined by the Program Administrator.

“**Installment Payment**” means the periodic repayments of the C-PACE Financing Amount, due from the property owners in the amounts and at the times, and payable to such entities, as are described in the Assessment and Financing Agreement.

2.167 “ **Lender**” means a mortgagee, the beneficiary of a deed of trust or other creditor who holds a mortgage, deed of trust, or other Recorded instrument that encumbers the a+Tract to secure the Financing as security for the repayment of a loan used to purchase the tract.

2.178 “ **Lender Consent**” means the instrument by which any Lender consents who holds a lien on any tract on which a qualifying Qualifying Energy Efficiency Improvement Project and/or a Renewable Energy Project will be located must consent in writing to the creation levy of an C-PACE Assessment and Assessment Lien against the tTract to pay all or a portion of the cost of the installation or improvement of a Qualified Improvement Project. Such Lender is entitled, within thirty (30) days after providing consent, to offer a loan to the owner of the tract as the primary Lender of the new levy of a C-PACE Assessment. Each consent must be rRecorded and once Recorded, is binding on the Lender by the City Clerk in the Lyon County Recorder’s Office and once recorded, is binding on the property owner who signed the consent and any other person who holds any interest in the tract to which the consent relates and who signed the consent, as well as their successors or assigns.

2.189 “ **Notice of Assessment and Assessment Lien**” means the document, executed by the City and rRecorded in the official records of the Lyon County Recorder’s Office by the City Clerk, to evidence the C-PACE Assessment and Assessment Lien, a form of which Notice is attached to the Program GuideC-PACE Assessment Agreement.

2.1920 “ **Program**” means the Fernley C-PACE Program created by City through adoption of this a+rResolution consistent with the ActNRS 271.6342 to 271.6325, inclusive.

2.204 **Program Administrator** means the person or entity contracted in writing by the City to assist with the planning and administration of the C-PACE Program.

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~~2.212~~ **“Program Guide”** means the comprehensive document which sets forth standard forms and establishes appropriate guidelines, specifications and criteria for the underwriting and approval of a Qualified Improvement Project detailed description of Program requirements, including the types and examples of eligible Eligible improvements/Improvements, from time to time published by the Program Administrator and approved by the City Program Manager. The Program Guide is hereby adopted by the City pursuant to NRS 271.6325(2).

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~~2.223~~ **“Property Owner”** means all of the owners of record of the Tract on which a Qualified Improvement Project is installed, the person or entity that holds title to a Qualifying Commercial or Industrial Real Property, together with their successors and permitted assigns, as further defined in the Assessment and Financing Agreement.

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~~2.234~~ **“Qualified Capital Provider”** means a Capital Provider any private source of project financing, including but not limited to private equity investors, specialty banks, banks, and credit unions that have been approved by the Program Administrator. This term includes any designee, successor, or assign of the entity that provides financing as the a Qualified Capital Provider for a Qualified Improvement Project.

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~~2.245~~ **“Qualifying Commercial or Industrial Real Property”** means any real property located within the District corporate limits of City, regardless of whether such real estate is subject to taxation by City, other than (i) a residential dwelling that contains fewer than five individual dwelling units; or (ii) property financed by a government-guaranteed financing program that prohibits the subordination of the government’s interest in the property or otherwise prohibits a contact under the Act NRS 271.6312 to 271.6325, inclusive, and that meets the project eligibility requirements as further defined herein. This term does not include any real property owned by the U.S. Department of Defense pursuant to NRS 271.6315(3).

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~~2.256~~ **“Qualified Improvement Project”** means one or more of an eEnergy eEfficiency Improvement Project, or wWater eEfficiency iImprovement pProject, rRenewable eEnergy pProject, or rResiliency pProject, which are permanently affixed to real property in an existing structure or in new construction, performed pursuant to the Act, that meet the project eligibility requirements as further defined herein.

~~2.27~~ **“Qualified Service Company”** has the meaning ascribed to it in NRS 333A.060, to wit: a person with a record of established projects or a person with demonstrated technical, operational, financial, and managerial capabilities to design and carry out operating cost savings measures and other similar building improvements, and who has the ability to secure necessary financial measures to ensure related guarantees for operating cost savings, as applicable. Such qualified Service Company shall be validly licensed or otherwise permitted under applicable state and city laws to provide such services and be in good standing with the Nevada State Contractors Board.

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~~2.268~~ **“Record”** and its derivatives mean to record in the official records of the Office of the County Recorder, Lyon County, Nevada.

~~“Real Estate Tax”~~ means the local tax on real estate that the City levies.

~~2.279~~ **“Renewable Energy Project”** means any improvement to real property, and

facilities and equipment used to generate electricity from renewable energy to offset customer load in whole or in part on the ~~qualifying~~ real property, or to support the production of renewable or thermal energy including, without limitation, energy storage, and all appurtenances and incidentals, ~~which are~~ necessary, useful or desirable for any such improvements, facilities and equipment, and which improvement has a useful life, ~~as estimated by the Program Administrator based on industry best practice,~~ of not less than ten (10) years.

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~~"Savings-to-Investment Ratio" means the total anticipated energy cost savings, as calculated in good faith by the Program Administrator, over the effective useful life of the qualified Energy Efficiency Improvement Project or Renewable Energy Project improvement(s), divided by the Financing Amount.~~

~~2.2830 " **Resiliency Project**" means a qualified improvement to real property, facilities or equipment with a useful life of not less than ten (10) years that:~~

- ~~1. Increases a building's structural integrity for seismic events;~~
- ~~2. Improves outdoor air quality;~~
- ~~3. Improves wind or fire resistance;~~
- ~~4. Improves stormwater quality or reduces on-site or off-site risk of flash flooding;~~
- ~~5. Improves or enhances the ability of a building to withstand an electrical outage;~~
- ~~6. Reduces or mitigates the urban heat island effort or the effects of extreme heat;~~
- ~~7. Reduces any other environmental hazard identified by the City of Fernley, or;~~
- ~~8. Enhances the surrounding environment in which the real property is located.~~

~~2.2934 " **Water Efficiency Improvement Project**" means an improvement to real property, facilities or equipment, and all necessary appurtenances and incidentals thereto, with a useful life of not less than ten (10) years that is designed to:~~

- ~~1. Reduce the water consumption of the real property, or;~~
- ~~2. Conserve or remediate water, in whole or in part, on the real property.~~

SECTION 3

ADMINISTRATION OF THE C-PACE PROGRAM: CREATION AND ADMINISTRATION OF DISTRICTS, FINANCING, ELIGIBILITY AND GENERAL INFORMATION ADMINISTRATION

3.1 AUTHORIZATION OF A DISTRICT. The City Council hereby authorizes the creation of a District pursuant to NRS 271.6312(2), the ultimate boundaries which may be the jurisdictional boundaries of the City in their entirety as described on Exhibit A attached hereto and incorporated herein by this reference; such boundaries may be amended from time-to-time as property annexes into the boundaries of the City without further action required by the Governing Body. Pursuant to NRS 271.6315(2)(a)—(d), the City Council hereby excludes from the District, and shall be deemed to have disapproved from inclusion in the District, any Tract unless and until: (a) the Property Owner of the Tract upon which a Qualified Improvement Project will be located enters into an Assessment Agreement with the City pursuant to Section 3.8; (b) the amount of the Assessment and Assessment Lien that will be placed on the Tract for the Qualified Improvement Project, if used for retrofitting an existing structure, does not exceed 25% of the fair market value of the property assessed; (c) the amount of the Assessment and Assessment Lien that will be placed on the Tract for a Qualified Improvement Project, if used for new construction or a gut rehabilitation, does not exceed 35% of the fair market value of the property assessed; (d) the outstanding amount owed on all Recorded instruments which are liens against the Tract, including the Assessment and Assessment Lien, will not exceed 90% of the estimated fair market value of the property assessed; and (e) any Lender who, as of the date of the Recording of the Notice of Assessment and Assessment Lien, holds a lien on the Tract on which the Qualified Improvement Project will be located, consents in writing to the levy of an Assessment and Assessment Lien against the Tract to secure the repayment of the Financing, which shall be in Recordable form and be binding on the holder of the lien who signs the consent, together with its successors and assigns pursuant to Section 3.9. Determination of fair market value under this Section 3.1 shall be determined by a certified appraiser pursuant to guidelines adopted pursuant to NRS 271.6325 in the Program Guide.

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CREATION OF DISTRICT:

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The City Council may create a district and add qualifying commercial or industrial properties to the district by adoption of a resolution for the Fernley C-PACE Program as follows:

- A. The geographic area of a district shall be within the corporate boundaries of the City, as they may be amended from time to time. Each district shall consist of Qualifying Commercial or Industrial Real Properties with approved applications and consents for Energy Efficiency Improvement Projects or Renewable Energy Projects as recommended by the Program Administrator for adoption by the City Council. Each Resolution adding qualifying properties into a district shall include an exhibit by reference that includes a description of the property or properties to be assessed, the types of improvements or installations to be financed for each property, and the Estimated Maximum Benefits stated in the consent for each property.
- B. A district will only consist of consenting the active Property Owner participants in the Program. Any Qualifying Commercial or Industrial Real Property or part thereof that enters the Program will automatically exit the Program once their financial Installment Payment is made to terminate the Financing associated with the recorded C-PACE Lien.
- C. Each Property Owner of a Qualifying Commercial or Industrial Real Property or part thereof that is an active and voluntary participant in the Program will enter into a written voluntary assessment agreement with the City, whereby the property owner consents in writing to (1) the specific amount of the assessment that will be imposed for the qualified improvement project and (2) the placement of an assessment lien on the real property. A Notice of Assessment and Assessment Lien have a C-PACE Lien and a property legal description recorded at the Lyon County Recorder's Office. Such Property Owner shall enter into an Assessment and Financing Agreement with a Qualified Capital Provider that sets for the applicable terms to repay the Financing Amount for an eligible Energy Efficiency Qualified Improvement Project or a Renewable Energy Project.

3.2 CREATION OF THE DISTRICT. The District shall be comprised of Tracts within the boundaries created by Section 3.1 against which there has been Recorded a Notice of

Assessment and Assessment Lien and for which no Release (as defined below) has been Recorded.

3.3 PARTICIPATION IN THE PROGRAM. The Program Administrator shall formally implement the Program through the creation of a publicly accessible website through which the public may submit applications for the Program.

3.4 PROGRAM ADMINISTRATION. The City may enter into a contract with a qualified, third-party Program Administrator to assist City staff in the creation and implementation of the C-PACE program. The City may authorize such Program Administrator to perform various tasks in accordance with ~~the Act NRS 271.6312 to 271.6325, inclusive,~~ and this Resolution. City may delegate authority to Record documents hereunder to the Program Administrator or to the Qualified Capital Provider. The Program Administrator may:

- A. Develop additional Program requirements, forms, consents, and materials ~~to be published in a Program Guide~~, as approved by the City Program Manager.
- B. Create an application form and approved Property Owner applications.
- C. Approve Qualified Service Companies and Qualified Capital Providers.
- D. Develop the methods to determine Program eligibility requirements including:
 - (1) Loan-to-value and lien-to-value limitations: pursuant to NRS 271.6315(2)(b)(d), inclusive
 - (2) Insurance requirements;
 - (3) Supplemental Sources of Financing; and
 - (4) Additional forms of security.
- E. Conduct market analysis and Program marketing plans.
- F. Develop Program quality assurance and quality control plan.
- G. The Program Administrator may adopt such trade name or names under which to operate as the Program Administrator, with the consent of the City Program Manager, as it may from time to time determine. The C-PACE Program shall be available Qualifying Commercial or Industrial Real Property owners throughout the City so long as the property owner, type of building and proposed Energy Efficiency Improvement Projects or Renewable Energy Projects all qualify for the C-PACE program pursuant to NRS 271.6312.

3.5 CITY AUTHORITY. The City hereby delegates authority to the City Program Manager and City Attorney to negotiate the forms of the C-PACE documents attached to the Program Guide. The City hereby delegates authority to the City Manager to execute documents related to a Financing, including the Assessment Agreement, the Notice of Assessment and Assessment Lien and the C-PACE Assignment. The Program Administrator, in collaboration with the City Manager, City Program Manager and City Attorney, may from time-to-time amend the Program Guide.

PROGRAM ELIGIBILITY

~~_____ The total contract price of any eligible Energy Efficiency Improvement Project or Renewable Energy Project must not exceed eighty percent (80%) of the Estimated Maximum Benefit for the tract as stated in the consent, as it may be amended from time to time, unless the owner of the property to be assessed (i) agrees to pay or pays, or causes another party to pay, the difference between eighty percent (80%) of the Estimated Maximum Benefits and the total contract price from a source other than financing provided pursuant to NRS 271.6312 to 271.6325, inclusive; and (ii) agrees in writing that the improvement or installation will in fact benefit the tract by an amount at least equal to the sum of the Estimated Maximum Benefit stated in the consent and the amount to be paid from a source other than the Qualified Capital Provider financing the project;~~

~~The outstanding amount owed on all recorded instruments which are liens against any tract included in the district shall not exceed ninety percent (90%) of the estimated fair market value of the property assessed, as defined by City, taking into account the imposition of the liens for Assessments pursuant to NRS 271.6321 to 271.6325, inclusive, and the additional value added to the tract by a project financed pursuant to~~



~~NRS 271.6312 to 271.6325, inclusive.~~

3.64 SOURCES OF FINANCING.

A. Except as provided in Section 3.6(B), Qualified Improvement Projects must be financed or refinanced only through an Assessment and Assessment Lien on the real property that secures the Financing obtained from a Qualified Capital Provider pursuant to a Financing Agreement.

B. In addition to, but not in lieu of the Financing pursuant to a Financing Agreement, a Qualified Improvement Project may be financed or refinanced through an assessment on the real property to secure bonds issued pursuant to NRS 271.475. Any bond or interim warrant issued for Qualified Improvement Projects may not be used in furtherance or support of a Financing Amount under a Financing Agreement with a Qualified Capital Provider, must not be secured by a pledge of the general credit or taxing power of the City or by the surplus and deficiency fund established pursuant to NRS 271.428, and shall be supplemental to a direct financing by a Capital Provider pursuant to a Financing Agreement described in Section 3.6(C) below.

C. In a Financing through a Qualified Capital Provider:

(i) The City shall assign the Assessment and Assessment Lien to the Qualified Capital Provider pursuant to the form of C-PACE Assignment attached to the Program Guide;

(ii) the Qualified Capital Provider is solely responsible for the billing, collection, and the enforcement of the Assessment and Assessment Lien.; and

(iii) A Delinquent C-PACE Payment will result in the interest and penalties set forth in the Financing Agreement, and enforcement of a Delinquent C-PACE Payment shall be by judicial foreclosure in the manner of a mortgage.

3.7 ASSESSMENT AGREEMENT AND FINANCING AGREEMENTS. Each Property Owner of a Qualifying Commercial or Industrial Real Property or part thereof wishing to be an active and voluntary participant in the Program shall enter into a written voluntary Assessment Agreement with the City, whereby the Property Owner consents in writing to the specific amount of the Assessment and Assessment Lien that will be imposed for the Qualified Improvement Project to secure repayment of the Financing provided by the Qualified Capital Provider for the project and to the Recordation of the Notice of Assessment and Assessment Lien against its real property. Such Property Owner, or its lessee, as applicable, shall enter into a Financing Agreement with a Qualified Capital Provider that sets forth the applicable terms to repay the Financing Amount for a Qualified Improvement Project. A Notice of Assessment and Assessment Lien with the property legal description and Assessment Agreement attached shall be Recorded.

3.8 WRITTEN CONSENT OF LENDER PROGRAM PARTICIPANTS

A. Property Owner. Within each district, each Property Owner of a Qualifying Commercial or Industrial Real Property on which an eligible Energy Efficiency Improvement Project and/or a Renewable Energy Project is located shall complete a written consent that verifies the location of the property is within the district, and enter into written assessment agreement with the City, whereby the property owner consents in writing to (1) the specific amount of the assessment

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that will be imposed for the qualified improvement project to secure repayment of the direct financing or refinancing provided by the Capital Provider for the project and (2) the placement of an assessment lien on the real property, the levy of an Assessment against the tract for the purposes of paying all or a portion of the cost of an Energy Efficiency Improvement Project and/or a Renewable Energy Project in an amount up to the Estimated Maximum Benefit to the tract from the installation of improvement. The Estimated Maximum Benefit may not exceed the market value of the tract as determined by the City or its Program Administrator. A signed copy of the contract shall accompany each such consent between the Property Owner and Qualified Service Company describing the installation or improvement identified in the consent.

B. Lender—Each Lender with respect to a Tract who holds a lien on any tract on which an Energy Efficiency Improvement Project or Renewable Energy Qualified Improvement Project will be located shall provide an executed and notarized Lender Consent in Recordable form, writing to the levy of an Assessment against the tract to pay all or a portion of the cost of the installation or improvement. The Lender Consent A signed consent must be in a recordable form and is binding on the Lender holder of a lien who signs the consent. Each Lender Consent provided and each amendment thereto must be recorded by the City Program Manager in the Lyon County Recorder's Office. Such Lender is entitled, within thirty (30) days after providing written consent, to offer a loan to the Property Owner of the tract as the primary Lender on the new levy of an Assessment. Each consent provided and each amendment thereto must be recorded by the City Clerk in the Lyon County Recorder's Office, and, once recorded, is binding on the Lender Property Owner who signed the consent and any other person or Lender who holds any interest in the Tract to which the Lender Consent relates and such Lender's, who signed the consent, their successors, and assigns.

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3.4 LIENS—The Lender Consent only applies to persons or entities meeting the definition of "Lender" herein as of the date of Recordation of the Notice of Assessment and Assessment Lien. outstanding amount owed on all recorded instruments which are liens against tract included in the district shall not exceed ninety percent (90%) of the fair market value of the property assessed, as determined by a certified appraiser pursuant to the Program Guide. The amount of the C-PACE assessment on a property for a Qualified Improvement Project used for improving or retrofitting an existing structure may not exceed 25 percent of the fair market value of the property assessed, as determined by a certified appraiser pursuant to program guidelines; for new construction or gut rehabilitation, the Assessment Lien may not exceed 35 percent of the fair market value as determined by a certified appraiser pursuant to program guidelines.

3.95 SPECIAL REVENUE FUND.

—The City Council may create, by resolution, a special revenue fund known as the "Fernley C-PACE Program Special Revenue Fund," which shall be a separate and distinct source of funds for Qualified Improvement Projects unrelated to the Act, but which may not be used to repay installment payments under a Financing Agreement. For such Fund, the City Council may authorize:

- A. Revenue or transfers from City's General Fund, bond proceeds issued for ~~the a-created-d~~District, special assessment proceeds, interest, program fees, grants, rebates, or donations.
- B. The expenditure of revenues to:
 - (1) Finance ~~qualifying Energy Efficiency Qualified~~ Improvement Projects ~~or Renewable Energy Projects~~ on Qualifying Commercial or Industrial Real Property ~~properties~~ within ~~the a-d~~District, and the completion of Energy Audits, engineering or architectural work, supplies, equipment, workforce development, and training;
 - (2) Fund ~~pP~~ program operations, marketing, supplies, or administrative costs of the Program;
 - (3) Fund the cost of a bond issuance, interim warrant, other financing mechanisms, or incidental costs;
 - (4) Fund a loan loss reserve fund; and
 - (5) Accumulate earned interest on deposited funds or revenues of a reserve.

3.6 SOURCES OF FINANCING

~~A. As described in Section 3.5, City may authorize the issuance of a bond to pay or reimburse of the cost of eligible Energy Efficiency Improvement Projects or Renewable Energy Projects from the Reno C-PACE Program Special Revenue Fund. Any bond or interim warrant issued for an eligible project must not be secured by a pledge of the general credit or taxing power of the City or by the surplus and deficiency fund established pursuant to NRS 271.428.~~

~~B. In lieu of issuing Assessment bonds to finance C-PACE eligible projects, ~~t~~The City may authorize ~~the Program Administrator to approve participating private Qualified Capital Providers to provide financing for qualified improvement~~ eligible projects. Such private sources of C-PACE Financing may include, but are not limited to private equity investors, specialty banks, licensed financial institutions, and credit unions. ~~In a direct financing agreement through a Qualified Capital Provider.~~~~

- ~~C.~~
 - ~~i. The City shall assign the Assessment and Assessment Lien to the Qualified Capital Provider.~~
 - ~~ii. The Qualified Capital Provider is solely responsible for the billing, collection, and the enforcement of assessments.~~
 - ~~iii. A delinquent payment of an Assessment will result in the interest and penalties set forth in the Financing Agreement, and enforcement of a delinquent payment shall be judicial foreclosure in the manner of a mortgage.~~

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SECTION 4

ADMINISTRATION OF THE C-PACE PROGRAM: PROJECT ELIGIBILITY

4.1 APPLICATION PROCESSING.

Within ~~the each d~~District created, an interested Property Owner, ~~a lessee~~, or a representative of the Property Owner, may ~~submit an application apply~~ to the City or its Program Administrator. The ~~City of its~~ Program Administrator will review the application material and determine whether the ~~real property Property Owner~~ and project meet the C-PACE Program eligibility requirements contained in ~~the is Act, this Resolution and in the Program Guide~~. Project applications from interested Property Owners ~~or lessees~~ will be processed on a first come, first serve basis ~~on its own merits and~~ in accordance with the ~~Act, this resolution and the~~ Program Guide ~~and shall only apply to the Tract set forth in the application~~.

4.2 SIZE THRESHOLDS.

There is no minimum or maximum aggregate dollar amount that may be financed ~~under the Program~~.

4.3 ELIGIBLE PROJECT.

An ~~Qualified Energy-Efficiency-Improvement Project or Renewable Energy Project~~ located on a Qualifying Commercial or Industrial Real Property is eligible ~~for the Program~~ provided ~~it meets the following requirements, the required underlying audit or feasibility study as described in the Program Guide has been reviewed by the Program Administrator and determined to be feasible with respect to its findings, savings, benefits, and compliance with any provisions within the Act, this Resolution or Program Guide without further action required by the City Council.~~

~~A. For an Energy-Efficiency-Improvement Project, the project must be determined to be appropriate by the City or its Program Administrator through an Energy Audit conducted by a Qualified Service Company. A project may be determined to be appropriate if:~~

- ~~(1) The Energy Audit includes a summary of recommendations, which for each recommendation must include existing and expected consumption and expected energy savings expressed in British thermal units, kilowatt-hours, and kilowatts, the expected annual energy savings, the cost, the payback period in years, the expected life cycle in years, and the percentage of savings, as applicable; and~~
- ~~(2) The expected energy savings from the project exceeds the investment costs of the project, i.e. the Savings-to-Investment Ratio (SIR) is greater than one (1.0).~~

~~B.A. For a Renewable Energy Project, the project must be determined to be feasible by the City or its Program Administrator through a written feasibility study conducted by a Qualified Service Company.~~

4.4 PROJECT ELIGIBILITY NOTIFICATION.

~~The City or its~~ Program Administrator shall prepare and deliver to the Property Owner a project eligibility notification ~~that includes the project's estimated Savings-to-Investment Ratio.~~

SECTION 5

ADMINISTRATION OF THE C-PACE PROGRAM: PROJECT FINANCING

5.1 ROLE OF CITY

Neither the City nor any authority or other governmental entity whose board is appointed by the City shall lend its credit ~~to a Property Owner~~ under this C-PACE Program.

~~Unless otherwise specified in the Program Guide~~ Except for oversight duties ~~set forth in this Resolution~~, the role of City with respect to a Financing shall be limited to:

- ~~(i) A. levying and assessing the C-PACE Assessments and C-PACE Liens~~
~~Executing the written voluntary aAssessment aAgreement with the Property Owner.~~
- ~~B. Executing and rRecording the Notice of Assessment and Assessment Lien for the property; and~~
- ~~C. Executing the C-PACE Assignment of Assessment and Assessment Lien to the gQualified Capital Provider that provides the direct fFinancing of the Qualified Improvement Project.~~

~~;~~ (ii) ~~facilitating the repayment of the C-PACE Financings by authorizing its Program Administrator to facilitate billing, collecting, and distributing each C-PACE~~ ~~Installment Payment in accordance with the C-PACE Assessment and Financing Agreement; and (iii) enforcing the timely repayment of the C-PACE Financings in the same manner as delinquent Real Estate Taxes are enforced, in accordance with the C-PACE Assessment and Financing Agreement, any applicable City ordinance, which enforcement action may include, without limitation and by way of example, conducting a tax foreclosure sale of the property by public auction.~~

5.2 FINANCING AMOUNTS; FEES AND COSTS

As described in Section 3.6, ~~the City may authorize private~~ Qualified Capital Providers ~~may~~ finance Qualified Improvement Peligible projects under the Program. The ~~Assessment and~~ Financing Agreement, entered into by a Property Owner or its lessee, as applicable, and Qualified Capital Provider for an Qualified Improvement eligible pProject, will specify that project's aggregate Financing Amount, which shall comprise the total cost of the Qualified Improvement Project(s) eligible improvements, as well as interest on that amount during the Financing Term and any other C-PACE Program costs and closing fees. The interest rate of a C-PACE Financing shall be determined by mutual agreement of Property Owner or lessee, as applicable, and Qualified Capital Provider. The amount of a C-PACE Financing shall be fully amortized in the e

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~~PACE~~ ~~l~~ installment ~~P~~ payments over the Financing Term as agreed by the Property Owner ~~or lessee, as applicable,~~ and qualified Capital Provider. ~~Neither the City nor the City Program Manager shall be involved in the negotiation of the Financing Agreement.~~

5.3 FINANCING TERM

The Financing Term shall not exceed the ~~weighted average effective expected~~ useful life of the ~~qualifying Energy Efficiency Project Qualified~~ Improvements ~~Project or, if the Qualified Improvement Project includes more than one improvement, the weighted average expected life of all Qualified Improvement Projects financed by the Financing Agreement or bond issuance, and/or Renewable Energy Project improvements as determined by the Program Administrator.~~

5.4 ALLOCATION OF CERTAIN ADMINISTRATIVE FEES

The City ~~may shall be authorized to~~ establish ~~an~~ administrative ~~on~~ fees to be applied to each financed ~~Qualified Improvement p~~ Project. The C-PACE Program will be self-financed, and the Program fees charged to participating Property Owners ~~are will be~~ designed to cover the start-up and recurring costs to administer the Program. Each financed project administration fee, as approved by the City, and published in the Program Guide shall be disbursed ~~to the Program Administrator~~ at the closing of ~~project~~ financing by the Qualified Capital Provider ~~to the Program Administrator.~~

5.5 ~~SERVICING FEE~~

~~The City may authorize the establishment of a recurring servicing fee that will be included in each Property Owner Installation Payment during a Financing Term. This servicing fee will be added to the Property Owner's Installation Payment and collected by the Program Administrator or its designee over the Financing Term.~~

5.6~~5~~ FORM OF ASSESSMENT AND FINANCING AGREEMENT

The Assessment ~~and Financing Agreement~~ ~~executed by the Property Owner and the City~~ shall be in substantially the form ~~attached to found in the Program Guide draft Assessment and Financing Agreement, as provided by the City.~~

SECTION 6

ADMINISTRATION OF THE C-PACE PROGRAM: CLOSING AND LIEN RECORDING

6.1 REPAYMENT MECHANISM

Financings granted under the C-PACE Program will be repaid by collection of ~~installment payments of the Financing Amount by the Qualified Capital Provider a Special Assessment by the Program Administrator or its designee and its remittance and allocation~~ as described in Section 7.

6.2 NOTIFICATION OF CLOSING

Upon closing of ~~an eligible project~~ Financing, the Program Administrator will promptly provide notice thereof to the City Program Manager, which notice shall include a statement of Financing Amount, ~~executed and notarized Lender Consents, evidence of subordination of pre-existing mortgages, if~~

any, and a copy of the ~~Assessment and Financing Agreement~~ executed by all parties thereto. ~~The City Program Manager shall provide such documentation to the City Attorney and City Clerk.~~

6.3 PROMPT LIEN RECORDING

~~At the closing of the Financing, the Notice of Assessment Upon receipt of such notice of closing, the City Clerk shall promptly record the and Assessment Lien, with the Assessment Agreement and legal description of the Tract attached as an exhibit, and then the C-PACE Assignment, in the official records of the Lyon County Recorder's Office. Such C-PACE Assessment Lien shall have the same priority status as a Real Estate Tax lien, except that such C-PACE Lien shall be Recorder in such order. Any amendments thereto must also be Recorder, have priority over any previously recorded mortgage or deed of trust on the Property only if the holder of such previously recorded lien executes a written subordination agreement is executed by the holder of such previously recorded lien. Prior to closing the Financing recording of any Assessment lien, the Property Owner must submit to the Program Administrator and Qualified Capital Provider evidence that: (i) the Property Owner is current on payments of all loans secured by a mortgage or deed to trust lien on the property and on Real Estate Tax payments to the City, (ii) Property Owner and lessee, as applicable, are not insolvent or subject to bankruptcy proceedings, and (iii) Property Owner's title to the Tract eligible property is not in dispute.~~

~~Thereafter, the C-PACE Installment Assessment Payments Following Recordation of the C-PACE Assignment, installment payments of the Financing Amount shall be billed and shall be collected and enforced by the Program Administrator or its designee, Qualified Capital Provider or its designee.~~

SECTION 7

ADMINISTRATION OF THE C-PACE PROGRAM: BILLING, REPAYMENT, REMITTANCE, DELINQUENCIES, AND TRANSFERS

~~7.1 APPLICABILITY. The Program Guide may specify any necessary or applicable procedures with respect to billing, repayment, remittance, delinquencies, or transfers, and the role of the City, Program Administrator, and/or any Qualified Provider, for any projects which, Sections 7.2 and 7.3 shall apply.~~

~~7.2 BILLING, AND REPAYMENT, DISBURSEMENT, REMITTANCE. Billing, collection, and repayment of the Financing Amount are the sole responsibility of the Qualified Capital Provider in amounts and at such time as described in the Financing Agreement.~~

~~At a frequency as detailed in the Assessment and Financing Agreement, the Program Administrator or its designee will send billing data, for each project to facilitate collection of Installment Payments. The Property Owner shall make C-PACE Financing Installment Payments, in such amounts and at such times as are described in the Assessment and Financing Agreement.~~

7.2 DISBURSEMENT AND REMITTANCE

~~The City's obligation the remit the C-PACE Installment Payments to Qualified~~

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~~Capital Provider shall be a limited obligation, only payable if and when the Program Administrator or the Program Administrator's designee receives funds from the C-PACE~~

~~Installments Payments. No later than fourteen (14) days after a C-PACE Installment Payment has been received by the Program Administrator, or the Program Administrator's designee, such party shall process, allocate among and remit the C-PACE Installment payment to the Qualified Capital Provider, and such other persons or entities who are entitled to receive such allocation under the Assessment and Financing Agreement, in accordance with the terms of the C-PACE Assessment and Financing Agreement.~~

7.3 DELINQUENCIES.

~~Only the current C-PACE Installment Payment and any Delinquent C-PACE Payments shall be prior and superior to all liens, claims, encumbrances and titles other than the liens and assessments of general taxes pursuant to NRS 361.450 constitute a first lien on the property having equal priority with the City Real Estate Taxes but junior to the City Real Estate Taxes. Delinquent C-PACE Payments shall (i) accrue penalties and interest in accordance with the C-PACE Assessment and Financing Agreement, and (ii) be enforced in accordance with the Assessment and Financing Agreement, any applicable City ordinances, which enforcement action may include conduction a tax foreclosure of sale of the property by public auction. C-PACE Installment Payments and Delinquent C-PACE Payments shall be levied, collected and enforced. Foreclosure is the sole responsibility of the Qualified Capital Provider and shall be performed in the manner of a judicial foreclosure of a mortgage.~~

~~In addition to the C-PACE Installment Payments and Delinquent C-PACE Payments due to Qualified Capital Provider, the City shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and costs, in the same manner as in a suit to collect delinquent Real Estate Taxes, and may charge interest and penalties for Delinquent C-PACE Payments in the same manner as delinquent Real Estate Taxes. All collection and enforcement costs, expenses, interest and penalties incurred by Qualified Capital Provider and City shall (i) be added to the Delinquent C-PACE Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Assessment, and (iv) be secured by the C-PACE Lien.~~

7.4 TRANSFERS.

~~The Property Owner subject to an Assessment and Assessment C-PACE Lien shall assume the obligation to repay all remaining, unpaid C-PACE Installment Payments due under on the Financing Agreement C-PACE Assessment (according to the Installment Payment schedule), whether the transfer of ownership was voluntary or involuntary. Only the current C-PACE Installment Payment and any Delinquent C-PACE Payments, together with any costs of collection under the Financing Agreement, shall be payable at the settlement of a foreclosure sale C-PACE Property sale, unless otherwise agreed by the parties.~~

C-PACE loans may be transferred, assigned or sold by a Qualified Capital Provider at any time during the C-PACE Financing Term without consent from Property Owner, City, or any other party, provided that Qualified Capital Provider shall (i) Record

~~a C-PACE Assignment, in the Lyon County Recorder's office, and (ii) deliver a copy of the recorded C-PACE Assignment to City and Program Administrator. The City will not be obligated to remit C-PACE Installment Payments to a new Qualified Capital Provider unless a recorded copy of the C-PACE Assignment has been provided to the City at least fourteen (14) days before the next due date for the C-PACE Installment Payment. Recordation of the C-PACE Assignment shall constitute an assumption by the new Qualified Capital Provider of the C-PACE rights and obligations contained in the C-PACE Assessment and Financing Agreement. Recordation of such the C-PACE Assignment shall constitute an assumption by the successor new Qualified Capital Provider of the C-PACE rights and obligations contained in the C-PACE Assessment and Financing Agreement, and the Assessment Agreement, as assigned by the City.~~

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NOW, THEREFORE be it hereby resolved by the City of Fernley Council as follows:

_____ The City Council hereby finds that the foregoing recitals are true and correct and are incorporated by reference.

_____ The City Council hereby directs the City Manager to implement a C-PACE Program to catalyze investments in energy efficiency and renewable energy through a voluntary financing program.

_____ The Mayor, City Manager, members, officers, employees, and agents of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute, deliver, and record all documents as may be required and otherwise to give effect to, carry out, and comply with the terms and intent of this Resolution, and to take all necessary and appropriate actions to effectuate the intent of this Resolution.

~~This resolution shall take effect immediately upon its passage.~~

~~**A RESOLUTION AMENDING THE CREATION OF THE CITY OF FERNLEY COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM, AND REPEALING AND REPLACING THE PRIOR RESOLUTION; TO PROVIDE THE MEANS OF FINANCING ONE OR MORE ENERGY EFFICIENCY IMPROVEMENT PROJECTS FOR COMMERCIAL OR INDUSTRIAL PROPERTY; TOGETHER WITH OTHER MATTERS RELATED THERETO.**~~

PASSED, APPROVED, AND ADOPTED on the ~~5th~~ ___ day of ~~October-August~~ 20201 by the following vote of the Council:

AYES:___ NAYS:___ ABSTENTIONS:___ ABSENT:___

By: _____
Mayor Roy Edgington, Jr.

ATTEST:

City Clerk Kim Swanson

