



# LINCOLN COUNTY MONTANA

## Resolution 2022-12

### CITY OF LIBBY/LINCOLN COUNTY RESOLUTION ESTABLISHING A CITY OF LIBBY/LINCOLN COUNTY PACE PROGRAM

#### THE BOARD OF COUNTY COMMISSIONERS FOR LINCOLN COUNTY, MONTANA FINDS:

WHEREAS, The 67th Regular Session of the Montana Legislature enacted the Commercial Property Assessed Capital Enhancement Act of Montana, Montana Code Annotated, Title 90, Chapter 4, Part 13 (the "PACE Act"), which allows the governing body of a local government, including a [City/County], to designate an area of the territory of the local government as a district within which an authorized local government official and the record owners of a privately owned commercial or industrial facility, covered multifamily housing accommodation as defined in § 49-2-305(6), MCA, or agricultural property may enter into written contracts to impose assessments on the property to repay the financing by the owners of Energy Conservation Projects as defined in § 90-4-1302(5), MCA; and

WHEREAS, the installation or modification by property owners of qualified Energy Conservation Projects in City of Libby/Lincoln County will further the goals of increasing economic efficiency and energy conservation without cost to the public; and

WHEREAS, the Libby City Council/Lincoln County Board of Commissioners finds that financing Energy Conservation Projects through contractually agreed to special assessments ("PACE financing") furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, and conserving natural resources; and

WHEREAS, the Libby City Council/Lincoln County Board of Commissioners adopted a Resolution of Intent to establish a PACE program for City of Libby/Lincoln County on April 20, 2022 including a reference to the MFFA Program Plan prepared as required by § 90-4-1306(1)(a)(iii), MCA, of the PACE Act and made the report available to the public via a link to the MFFA website;

WHEREAS, the public hearing required by § 90-4-1306(1)(b), MCA, of the PACE Act at which the public could comment on the proposed program, including the MFFA Program Plan available for public inspection as mentioned above occurred April 27, 2022 at 10:30AM for City of Libby/Lincoln County; and

WHEREAS, pursuant to the PACE Act, the Libby City Council/Lincoln County Board of Commissioners will delegate the administration of the City of Libby/Lincoln County PACE

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STATE OF MONTANA LINCOLN COUNTY

RECORDED: 04/27/2022 2:52 KOI: RESOLUTION

ROBIN A. BENSON CLERK AND RECORDER

FEE: \$0.00 BY: *[Signature]*

FOR: LINCOLN COUNTY BOARD OF COMMISSIONERS 512 CALIFORNIA AVE,



## LINCOLN COUNTY MONTANA

program to the Montana Facility Finance Authority (the "MFFA") (the "Authorized Representative") that can administer the program at no cost to the City of Libby/Lincoln County. Administration by the MFFA will enable the program to be administered without use of City of Libby/Lincoln County resources, will assure the objectives of impartiality and confidentiality of owner information, and will be convenient and advantageous to the City of Libby/Lincoln County.

**THEREFORE BE IT RESOLVED BY THE LIBBY CITY COUNCIL AND THE  
LINCOLN COUNTY BOARD OF COMMISSIONERS OF LINCOLN COUNTY THAT:**

Section 1. Establishment of Program. City of Libby/Lincoln County hereby adopts this Resolution Establishing the City of Libby/Lincoln County PACE Program and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to the City of Libby/Lincoln County and its citizens. The program will be called City of Libby/Lincoln County Commercial Property Assessed Capital Enhancement City of Libby/Lincoln County PACE" and is herein called "the Program."

Section 2. Assessments. City of Libby/Lincoln County will, at the property owner's request, impose contractually agreed to special assessments on the property to repay PACE financing for Energy Conservation Projects available to the record owners of a privately owned commercial or industrial facility, covered multifamily housing accommodation as defined in § 49-2-305(6), MCA, or agricultural property.

Section 3. Qualified Projects. The following two types of projects are qualified Energy Conservation Projects for PACE financing that may be subject to such assessments:

1. "Energy conservation measures": means a permanent cost-effective energy improvement fixed to real property, including new construction, and intended to decrease energy or water consumption and demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature. The exemplary list of energy conservation measures codified at § 90-4-1302(4), MCA, is incorporated by reference herein.
2. "Renewable Energy System": means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more forms of renewable energy to generate electricity or to reduce the use of nonrenewable energy. The term includes a biomass stove but does not include an incinerator or a digester. "Renewable energy" has the meaning provided in § 15-24-3102, MCA.





## LINCOLN COUNTY MONTANA

Section 4. District. The boundaries of the entire geographic area within the City of Libby/Lincoln County's jurisdiction are included in the boundaries of the district where PACE financing and assessments can occur.

Section 5. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the MFFA to service the debt through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. The City of Libby/Lincoln County will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. The City of Libby/Lincoln County will not, at this time, provide financing of any sort for the PACE program.

Section 6. Authorized Representative. The MFFA will be designated as the Authorized Representative with authority to enter into written contracts with the record owners of real property in the City of Libby/Lincoln County, to provide notice of assessment levies imposed by the City of Libby/Lincoln County to the County assessor pursuant to the PACE Act to repay the financing of qualified projects on the owners' property, enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments, and to receive assessment funds from the City of Libby/Lincoln County for the purpose of paying debt service due on such third-party financings secured by the assessments. The City Administrator and County Administrator or his/her designee will be the liaison with the Authorized Representative.

Section 7. Enforcement. The City of Libby/Lincoln County will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.

Section 8. Amendment of Program. The Libby City Council/Lincoln County Board of Commissioners may amend the Program by resolution adopted after public comment at a properly noticed regular public meeting.



# LINCOLN COUNTY MONTANA

## THE BOARD FURTHER RESOLVES:

1. If a provision of this resolution conflicts with a provision of a previously adopted resolution, this resolution will prevail.
2. This resolution and its various sections, clauses and paragraphs are severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the resolution will not be affected.
3. This resolution will be effective immediately upon adoption, in accordance with § 7-5-123, MCA.
4. This Board directs that this resolution be entered into the minutes and signed by the Chair of the Board in accordance with § 7-5-121, MCA.

## END OF RESOLUTION

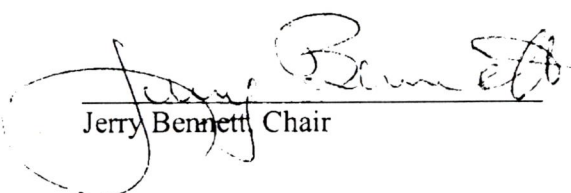
Approved as to Form:

  
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Marcia Boris, County Attorney

Date presented to the Board 4/27/2022 Approved (☒) Disapproved ( ) Amended ( )

Adopted this 27<sup>th</sup> day of April, 2022.

LINCOLN COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Jerry Bennett, Chair

ATTEST:

  
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Robin A. Benson, Clerk of the Board