

## **Colorado Commercial Property Assessed Clean Energy (CO C-PACE) Program Capital Provider Information and Application for Participation**

### **Section I - Background**

CO C-PACE and its Program Administrator<sup>1</sup> (PA) are seeking Qualified Capital Providers (QCPs) for its C-PACE Program (PROGRAM). QCPs are defined as banks or other lending institutions which have received approval from the PROGRAM to provide financing for CO C-PACE projects that have been approved for funding by the PA.

The PROGRAM will not use taxpayer funds to finance CO C-PACE Projects (PROJECTS). It will support the work of the PA to build and maintain the PROGRAM infrastructure and the PACE Data Management Platform (PDMP) needed to assess project technical and economic feasibility. In addition, the PDMP will generate the documentation necessary to inform and help achieve mortgage holder consent required for CO C-PACE financing. It will also support QCPs wishing to finance PROJECTS.<sup>2</sup>

The QCP selected by the building owner will enter into a Finance Agreement which will enumerate the “RIGHTS” to be assigned to the QCP for the term of the payment obligation, which may, depending on the useful life of the project, extend up to 20 years. Such RIGHTS, including foreclosure, will be assigned by the PROGRAM as evidenced by the lien recorded on the subject property.

Colorado C C-PACE is taking an open market approach and will not grant exclusive access to any single capital provider. This open market approach will offer multiple financing options to building owners, enabling the PROGRAM to achieve its mission of making financing accessible and affordable. QCPs will be provided an opportunity to bid on projects as they are originated by the PROGRAM. However, should an owner pre-select a capital provider for a specific project, the selected capital provider must complete the **Capital Provider Application** and **Participation Agreement** in Section II.

The PROGRAM maintains a draft standard Assessment and Financing Agreement, and a Mortgage Holder Consent Agreement for use by QCPs. QCPs will be provided the opportunity to comment on the standard documents. CO C-PACE will also consider similar Agreements provided by the QCP, the use of which will be permitted upon approval by the PROGRAM. Upon submission for specific projects however, all legal documentation shall remain subject to PROGRAM approval.

#### **1. Colorado CO C-PACE:**

The Colorado General Assembly passed the New Energy Jobs Creation Act of 2010 (HB 10-1328), as amended by the New Energy Jobs Act of 2013 (SB-13-212) and SB-171, enacted in 2014. These statutory provisions are codified at C.R.S. 32-20-101 et seq. (collectively, the CO C-PACE Statute). The CO C-PACE Statute established the Colorado New Energy Improvement District (NEID or the “District”), to be governed by a Board of Directors (Board) comprising seven members, including representatives from the Colorado Energy Office, the real estate development industry, banking, the energy efficiency and

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<sup>1</sup> Sustainable Real Estate Solutions, Inc. (SRS)

<sup>2</sup> CO C-PACE financing has two significant advantages: (1) the projects are generally cash-flow positive, and (2) credit risk is reduced by the attachment of the CO C-PACE lien to the property. Given the high security of the CO C-PACE lien, the PROGRAM permits QCPs to utilize prudent underwriting criteria that are focused on the credit-worthiness of the property rather than the owner.

renewable energy industries and public utilities. The current members of the Board are listed at <https://www.colorado.gov/pacific/energyoffice/new-energy-improvement-district-board>

For a project to be eligible for PROGRAM financing, the following conditions must be met:

a) Mortgage Holder Consent

The PROGRAM requires that prior to the imposition of the CO C-PACE lien, which will be senior in priority to all commercial mortgages on the property, commercial property owners must receive and provide to the PA written consent of the existing holder of mortgages of deeds of the trust on the property.

b) Building Eligibility

In order to be eligible for PROGRAM financing, the property seeking financing must meet the following requirements:

- The property must be located in a participating County.
- The applicant must provide evidence that it is the legal owner of the property and that all the legal owners of such property agree to participate.
- The property must be a nonresidential property. Multifamily properties containing five dwelling units or more are eligible.
- The property must have a property tax identification number. For building owners who are exempt from property tax liability, the County must agree to issue a property tax ID for collection purposes.

c) Project Eligibility

CO C-PACE transactions eligible for financing must include PROGRAM approved energy efficiency, renewable energy and/or water conservation improvements. For more information see the Program Guide.

## 2. Underwriting Standards:

Colorado CO C-PACE has not (and will not) set strict project underwriting criteria. At a minimum, QCPs shall utilize underwriting criteria that include but are not limited to the following:

- a.) Total property-related debt to property value ratio (Total property-related debt includes mortgage debt, the CO C-PACE financing and any other obligations secured by the property). The property value which may be established as either (i) the assessed value of the property, or (ii) its appraised value, as supported by a recent appraisal. In either case, the property's value may include the enhanced value of the property resulting from the installation of the improvements being financing with CO C-PACE.
- ✓ QCP shall identify acceptable ratio.
- b.) The property owner has been current on its property tax and assessment payments.
- ✓ QCP shall identify required period of time for current payments, and any exceptions, e.g. newly owned property.

- c.) The property owner must not have any involuntary liens, defaults, or judgments applicable to the subject property. A property owner may be able to participate if it can demonstrate that there is an acceptable reason for the lien, default, or judgment and provide supporting documentation.
  - ✓ QCP shall identify allowable exceptions and required documentation.
- d.) The property owner(s) or their affiliated companies have not been a debtor in a bankruptcy.
  - ✓ QCP shall identify bankruptcy look-back timeframe.
  - ✓ Under no circumstances shall a CO C-PACE lien be allowed on a property that is subject to bankruptcy proceedings, regardless of owner qualifications.
- e.) Cash flow generated by the property.
  - ✓ Identification of how QCP will determine property owner's ability to make the Special Assessment fee payments as established in the Financing Agreement and secured by the CO C-PACE lien. Such determination is at the discretion of the QCP but could include QCP standards for a savings-to-investment ratio (SIR) or debt service coverage ratio (DSCR).

### **3. Finance Agreement:**

Upon approval by the PA of the property and project for financing, the QCP will enter into a Financing Agreement with the property owner that will identify all terms of the transaction including, but not limited to:

- i) Term of repayments
- ii) Payment amounts and frequency
- iii) Collection through County property tax collection infrastructure
- iv) Delinquency and default consequences, including foreclosure
- v) Non-acceleration of obligation
- vi) Transferability of obligation upon sale or other transfer of ownership
- vii) Assignability of Financing Agreement rights to the QCP
- viii) CO C-PACE lien recordation on property title.

### **4. PACE Assessment Recording, Billing, and Collection**

Upon receiving written notice from the PROGRAM the County shall promptly levy the PACE assessment against the qualifying commercial real property to be benefited by the energy improvements financed by QCP and described in the Financing Agreement, and shall place a lien on the qualifying commercial real property to secure payment of the PACE assessment. Colorado CO C-PACE will assign the PACE assessment to the project's QCP.

The County, shall bill the PACE assessments in the same manner as it bills its real property taxes or other special assessments. The PACE assessment payments shall be due on dates concurrent with the County's normal property billing practice.

## **5. Payments:**

PACE assessments collected by the County will be remitted to a SERVICER.<sup>3</sup> The SERVICER will remit funds due to the QCP that funded the project.

## **6. Becoming a Qualified Capital Provider:**

A capital provider interested in offering CO C-PACE financing in Colorado must submit a completed CO C-PACE Capital Provider Application and Participation Agreement (Section II)

### **CO C-PACE Qualified Capital Provider Application and Participation Agreement**

#### **Process for filing an Application:**

- Applicants may submit their information via email to: ProgramAdmin@copace.com
- There is no deadline by which applicants must submit an Application
- Within two weeks of receipt of the Statement of Qualifications, PA will inform each applicant of its status.
- At its discretion, the PA may contact respondents to schedule an interview to resolve any questions.
- Once the capital provider has been qualified, the PA will review and incorporate, at its sole discretion, selected marketing materials provided by the QCP on the copace.com website.
- Right to Rescind: At any time and at its sole discretion, CO C-PACE reserves the right to rescind the “QCP status” of any capital provider.

#### **Section - II: CO C-PACE Capital Provider Application and Participation Agreement**

- Part A: CO C-PACE Capital Provider Application (Attached)
- Part B: CO C-PACE Capital Provider Participation Agreement (Attached)

or the combined document is accessible at:

[http://copace.com/wp-content/uploads/CO\\_C-PACE\\_CP\\_Application\\_PartAgmt.pdf](http://copace.com/wp-content/uploads/CO_C-PACE_CP_Application_PartAgmt.pdf)

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<sup>3</sup> To be appointed by the PROGRAM