**FOR IMMEDIATE RELEASE**
Office of Gov. John Hickenlooper

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# Colorado's New Energy Improvement District launches a statewide commercial PACE program

## *Colorado C-PACE offers property owners a new tool to finance energy efficiency, water-conservation and renewable* energy projects

DENVER – Dec. 1, 2015 – Today the New Energy Improvement District launches a statewide commercial Property Assessed Clean Energy (C-PACE) program – providing commercial property owners a unique mechanism to finance energy efficiency, renewable energy, and water-conservation improvements. The C-PACE program offers commercial property owners the opportunity to spread energy and water project costs over a term of up to 20 years, and repay them through an assessment on their property tax bill, with no upfront capital outlay.

"Commercial buildings currently account for about 20% of Colorado's energy use. Colorado's commercial PACE program offers a financial tool to help spur energy efficiency and renewable energy investments in our state's building infrastructure, providing long-term utility savings, while stimulating the economy," said Paul Scharfenberger, chairman of the New Energy Improvement District board.

The program provides financing for a variety of improvements, including new heating or cooling systems, lighting, water pumps, insulation, solar panels and other renewable energy projects. Typical long term C-PACE financing covers 100% of a project's cost and is repaid, for up to 20 years, in semi-annual payments that are structured as a regular line item on the property tax bill. When a property is sold the PACE assessment stays with the property and transfers to the new owner who, in turn, enjoys the ongoing utility cost-savings associated with the project.

Sustainable Real Estate Solutions (SRS) was competitively selected as the Colorado C-PACE administrator and will oversee an open, competitive lending model that makes it possible for a wide variety of capital providers to participate. All projects will be financed entirely with private funds, allowing local lenders, national banks, and PACE capital providers an opportunity to finance projects.

"C-PACE provides commercial and industrial building owners with an attractive way to finance capital intensive building modernization projects. The resulting energy savings typically outweigh the annual assessment payment thereby enabling cash flow positive projects," said Brian J. McCarter, CEO of SRS, administrator for the Colorado C-PACE program.

Eligible properties include office buildings, hotels, retail, agricultural, non-profits, industrial buildings and multi-family properties – with five or more units. Projects must be located in counties that have opted to participate in the program. Boulder County has opted-in, and several other counties around the state already have indicated that they plan to participate.

For more information or to apply for C-PACE financing, visit the Colorado C-PACE website at www.COPACE.com.

(http://copace.com/)

(https://www.youtube.com/embed/etp1LQXdLoc?autoplay=1)

# How Colorado C-PACE works

▶ Play Video

## COLORADO C-PACE SERVICES TO COUNTIES & GOVERNMENTS

The Colorado New Energy Improvement District (NEID), an independent body corporate and politic of the State of Colorado was established under C.R.S. § 32-20-104(1). The Colorado Commercial Property Assessed Clean Energy (C-PACE) program was established under C.R.S. §§ 32-20-101. C-PACE facilitates financing for clean energy improvements to commercial, industrial, agricultural, non-profit and multifamily (with 5 or more units) properties by utilizing the local property assessment mechanism to provide security for repayment of the financing.

Under C.R.S. § 32-20-105(1), the purpose of NEID is "to help provide the special benefits of new energy improvements to owners of eligible real property who voluntarily join the district by establishing, developing, financing, and administering a new energy improvement program through which the district can provide assistance to such owners in completing new energy improvements".

C.R.S. § 32-20-105(3) directs NEID to "establish, develop, finance, and administer" the Colorado C-PACE program but stipulates that the C-PACE program may only operate in a given county if the board of county commissioners of the county has adopted a resolution authorizing the NEID to conduct the program within the county.

To facilitate counties participation in the Colorado C-PACE program, NEID has prepared the NEID-County Participation Agreement (/wp-content/uploads/CoPACE_NEID-County_Agreement_Final_09-09-15.pdf), which outlines the terms of the program.

Contact us (/contact-us) to learn how Colorado C-PACE is supporting counties participation in the C-PACE program. C-PACE projects improve the local commercial and industrial building stock. Moreover, the Colorado C-PACE program advances public policy goals to:

- Increase local jobs
- Reduce greenhouse gas emissions
- Increase renewable energy mix

Get Started Today (/contact-us).

# CoPACE NEID-COUNTY PARTICIPATION AGREEMENT

**THIS PARTICIPATION AGREEMENT** (the "**Agreement**") is made and entered into as of the ____ day of _____, 2015, by and between the County of _____, a body corporate and politic of the State of Colorado (the "**County**"), and the **COLORADO NEW ENERGY IMPROVEMENT DISTRICT**, an independent body corporate and politic of the State of Colorado established under C.R.S. § 32-20-104(1) (the "**District**") (each a "Party" and collectively the "Parties").

## RECITALS

**WHEREAS**, C.R.S. §§ 32-20-101 *et seq*. (the "**CoPACE Act**" or the "**Act**") established the District and a commercial property assessed clean energy (CoPACE) program; and

**WHEREAS**, CoPACE is a program to facilitate financing for clean energy improvements to commercial, industrial, multi-family, institutional and agricultural properties by utilizing a local assessment mechanism to provide security for repayment of the financing; and

**WHEREAS**, under C.R.S. § 32-20-105(1), the purpose of the District is "to help provide the special benefits of new energy improvements to owners of eligible real property who voluntarily join the district by establishing, developing, financing, and administering a new energy improvement program through which the district can provide assistance to such owners in completing new energy improvements"; and

**WHEREAS**, C.R.S. § 32-20-105(3) directs the District to "establish, develop, finance, and administer" the CoPACE program but stipulates that the CoPACE program may only operate in a given county if the board of county commissioners of the county has adopted a resolution authorizing the District to conduct the program within the county; and

**WHEREAS**, the Board of County Commissioners of the County has adopted a resolution in the form attached hereto as Exhibit A, authorizing the District to conduct the CoPACE program within the County and authorizing the County to enter into this Agreement with the District;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the CoPACE Act, it is hereby agreed as follows:

**Section 1. Definitions**.

(a) "**CoPACE Assessment**" means the CoPACE assessment authorized by the Act, and as further defined at C.R.S. § 32-20-103(14).

(b) "**Commercial Building**" means any real property other than a residential building containing fewer than five dwelling units.

(c) "**New Energy Improvement**" means one or more energy efficiency improvements or renewable energy improvements, or both, made to Participating Property that will reduce the energy or water consumption of or add energy produced from

renewable energy sources with regard to any portion of the Participating Property, as specified in the CoPACE Act and in the Program Guidelines.

(d) "**Participating Property**" means a Commercial Building that has been approved by the District to participate in the CoPACE program.

(e) "**Program Guidelines**" means the rules, regulations and guidelines promulgated by the District to implement the CoPACE program pursuant to the CoPACE Act, as the same may be amended or supplemented from time to time.

**Section 2. Obligations of the District.**

(a) Program Requirements.

Pursuant to the CoPACE Act, the District:

(1) shall develop Program Guidelines governing the terms and conditions under which private financing will be made available to the CoPACE program, and may serve as an aggregating entity for the purpose of securing state or private third-party financing for New Energy Improvements pursuant to the Act; and

(2) shall receive and review applications submitted by property owners within the County for financing of New Energy Improvements, and approve or disapprove such applications in accordance with the Program Guidelines and underwriting procedures and requirements established by the District.

(b) Project Requirements.

If a property owner requests financing through the CoPACE program for energy improvements under the CoPACE Act, the District shall:

(1) impose requirements and criteria to ensure that the proposed energy improvements are consistent with the purpose and requirements of the CoPACE Act, and

(2) provide the notification and conduct the hearing required by C.R.S. § 32-20-106(3) of the CoPACE Act prior to imposing a special CoPACE Assessment on any Participating Property.

(c) Assessment and Financing Agreement for Project.

(1) The District and the party providing the financing (the "**Capital Provider**") may enter into an Assessment and Financing Agreement with the owner of Participating Property (the "**Assessment & Financing Agreement**"). The Assessment & Financing Agreement shall clearly state the amount of the CoPACE Assessment to be levied against the Participating Property. The District and the Capital Provider shall disclose to the property owner the costs and risks associated with participating in the CoPACE program, including risks related to the failure of the property owner to pay the CoPACE Assessment provided for in the Assessment & Financing Agreement. The District and the Capital Provider shall disclose to the property owner the effective interest rate on the CoPACE Assessment, including

program application and other fees and charges imposed by the District to administer the CoPACE Program, fees charged by the Treasurer for collection, as well as any fees charged by the Capital Provider, and the risks associated with variable interest rate financing, if applicable. The property owner must be informed that each New Energy Improvement, regardless of its useful life, will be bundled with other such improvements on the Participating Property for purposes of assessment and paid for over the assessment term.

(2) Pending adoption of legislation to amend the CoPACE Act to remove Section 32-20-107(2) from the CoPACE Act, the District shall be required to include in the Assessment and Financing Agreement a provision binding upon the owner of Participating Property and the District that requires the owner of Participating Property to bind itself, the property and any successors to a covenant, agreement and waiver pursuant to which the owner of Participating Property agrees not to utilize Section 32-20-107(2) as the basis for any objection, protest or challenge to any future property tax assessment relating to the Participating Property and expressly waives the right to do so. Such provision shall include waiver, covenant and indemnity provisions that will provide protections for the County proceeding with its future valuation assessment process in the normal course, including a valuation that takes into account the New Energy Improvements. The covenant, agreement and waiver provisions shall be made expressly for the benefit of the County as a third party beneficiary. These provisions will be included as a condition to the Participating Property and the owner of Participating Property being accepted into the CoPACE Program and will be a material covenant in the Assessment & Financing Agreement signed by the owner of Participating Property, the District and the Capital Provider. The covenant and agreement shall allow the County to deny any objection, protest or challenge based on Section 32-20-107(2) filed by the owner of Participating Property as to any future valuation assessment by presenting a copy of the Assessment & Financing Agreement containing the covenant, agreement and waiver referenced in this subsection.

(d) <u>Establish CoPACE Assessments and Assessment Units</u>.

(1) With respect to each CoPACE Assessment placed on a parcel of Participating Property, the District shall determine the amount of the CoPACE Assessment and establish the appropriate special assessment units and specify the method of calculating the CoPACE Assessment for each Participating Property. The District's Board of Directors shall approve the specifics of the applicable CoPACE Assessment including, without limitation, the amount of the CoPACE Assessment, term, interest rate and repayment dates, which approval shall be set out in an assessing resolution (a "**Resolution**"). In no event shall the amount of any CoPACE Assessment exceed the value of (a) the special benefit provided to the Participating Property, or (b) the Participating Property, as provided in C.R.S.

§ 32-20-106(1). Costs incurred for any property not approved to participate may not be included in a certified assessment roll.

(2) The District shall cause to be prepared and certified under the District's corporate seal to the County Treasurer annually but no later than November 30 of each year a District assessment roll for each Participating Property in a form determined by the District and acceptable to the County Treasurer. Such assessment roll shall specify for the Participating Property to which it pertains the amount of each installment of principal and interest (if the CoPACE Assessment is payable in installments), provided that each installment will become due on the date or dates that the Participating Property taxes are payable under C.R.S. Section 39-10-104.5(2), and the date on which the assessment is expected to be satisfied in full.

(e) Filing Assessment with County Clerk & Recorder.

The District shall transmit to the County Clerk and Recorder for recording copies of each Resolution and certified assessment roll affecting Participating Properties located in the County, as specified in C.R.S § 32-20-107(2). After recording the Resolution and certified assessment roll, the County Clerk and Recorder shall file a copy of each Resolution and certified assessment roll with the County Treasurer and the County Assessor.

(f) Delinquencies.

In the event of the failure by the owner of the Participating Property to pay the installment due on a CoPACE Assessment, the County Treasurer shall advertise and sell the assessed eligible real property tax lien defaulted upon for the payment of the whole of the unpaid installment of principal and interest. Advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate tax liens in default of payment of the general property tax. The sales proceeds up to the amount in the certified assessment roll, less the County Collection Fee described in Section 3(c) of this Agreement and any other statutorily imposed fees required to be paid to the County shall be forwarded to the District.

**Section 3. Obligations of the County**.

(a) Billing of CoPACE Assessment.

Upon receiving the certified assessment rolls from the District, as contemplated in **Error! Reference source not found.**, the County Treasurer shall add the amounts required to be paid by owners of the Participating Properties burdened by such CoPACE Assessments specified on such rolls to the property tax bills of the respective Participating Properties.

(b) Billing and Collection; Payment to the District.

(1) As specified in Section 3(a), the County shall bill the CoPACE Assessments in the same manner and at the same time as it bills its real property taxes. The CoPACE Assessment payments shall be a separate clearly defined line item and shall be due on the same dates as the County's real property taxes.

(2) Billed CoPACE Assessment amounts shall be collected in the same manner as the property taxes of the County on real property, including, in the event of default or delinquency, with respect to any penalties, fees and remedies, and lien priorities as provided in Section 32-20-107(1) of the CoPACE Act. Interest shall be collected at the rate specified in C.R.S. § 5-12-106(2) and (3), in accordance with C.R.S. § 32-20-106(7), as may be amended. Penalties and interest on delinquent CoPACE Assessments shall be charged in the same manner and rate as the County charges for delinquent real property taxes.

(3) The County Treasurer shall remit all amounts collected with respect to the CoPACE Assessments within any calendar month to the District in same manner as taxes are distributed accordance with C.R.S. §39-10-107(1)(a) less the County Collection Fee described in Section 3(c) of this Agreement. The County will provide monthly collection reports to the District, and the District, at its own expense, shall have the right to audit the records relating to the CoPACE Assessments upon reasonable notice at reasonable times. The District and County agree to provide each other with such reasonable information as they may request and the District and the County agree to provide such information in an electronic format satisfactory to the other.

(c) County Collection Fee.

The County Treasurer shall charge the District the fees prescribed in C.R.S. § 30-1-102(1)(c) for the collection of the CoPACE Assessments and delinquencies.

(d) Collection of Delinquent Payments.

In the event of the failure by the owner of the Participating Property to pay the installment due on a CoPace Assessment, the County Treasurer shall advertise and sell the assessed eligible real property tax lien defaulted upon for the payment of the whole of the unpaid installment of principal and interest. Advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate tax liens in default of payment of the general property tax.

(e) Promotion of Program; Assistance for District Financing.

(1) The County shall use good faith efforts to assist the District in local marketing efforts and outreach to the local business community to encourage participation in the CoPACE program, such as including CoPACE program information on the County's website, distributing an informational letter from appropriate County officials to local businesses regarding the program, and conducting one or more business roundtable events.

(2) The County shall use good faith efforts to assist in gathering and providing information for the District (and/or any third party CoPACE Capital Provider) to offer, sell and issue District (or Capital Provider) bonds, notes or other obligations to provide funds for CoPACE program.

(f) Assessing the Value of Participating Property.

C.R.S. § 32-20-107(2) currently requires the County Assessor, in determining the actual value of the Participating Property, to not take into account any increase in the market value of the Participating Property resulting from the completion of a New Energy Improvement and further provides that, once the CoPACE Assessment applicable to a Participating Property has been paid in full, the Assessor may proceed to value the subject property in accordance with the regular assessment methodology of the County. The Parties acknowledge that this statutory mandate may be in conflict with Article X, Section 3(1)(a) of the Colorado Constitution, and thus be void. As a result, until such time as C.R.S. § 32-20-107(2) is amended to cure any constitutional defects, the Parties agree that the provision will not be implemented and that the language required by Section 2(c)(2 of this Agreement shall be included in all Assessment & Financing Agreements entered into for Participating Properties located within the County.

**Section 4. Term and Termination**.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the CoPACE Assessments have been paid in full or deemed no longer outstanding. The County may terminate this Agreement at any time with 120 days advance written notice to the District. Upon termination of this Agreement, the County shall no longer be deemed to have authorized the district to conduct the program within the county as required by C.R.S. §32-20-105(3). As to any outstanding CoPACE Assessments owed by Participating Property(ies) as of the date of such termination, the County shall continue to meet its obligations under this Agreement until any and all CoPACE Assessments due the District by the Participating Property have been paid in full and distributed to the District.

**Section 5. Default**.

Each Party shall give the other Party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting Party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the 30 days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other Party of the actual cure of any such default. The Parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance.

**Section 6. Miscellaneous Provisions**.

(a) Amendment and Termination.

After the District sells and issues its bonds, notes or other obligations (or a third party capital provider provides funds) to finance the costs of any CoPACE project, this Agreement may not be amended or terminated by the Parties without the prior approval of the holders of the District's bonds, notes or other obligations (or such third party capital provider, as applicable), which approval shall be obtained in accordance with the indenture or other documents entered into by the District in connection with such financing.

(b) 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.

(c) 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.

(d) Notices.

All notices, requests, consents and other communications 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 County:

_____ County
c/o Board of County Commissioners
_____
_____

With a Copy to:

County Attorney
_____ County
_____
_____

If to the District:

Colorado New Energy Improvement District
c/o Colorado Energy Office
1580 Logan St., Suite 100
Denver, Colorado 80203
Attention: Director

With a Copy to:

Widner Michow & Cox LLP
Attorneys for the District
13133 East Arapahoe Road
Centennial, CO 80112

(e) Amendment.

Except as otherwise set forth in this Agreement, any amendment to any provision of this Agreement must be in writing and mutually agreed to by the District and the County.

(f) Applicable Law and Venue.

This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Colorado. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the district courts of the County, the State of Colorado.

(g) 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. In the event of any conflict between the Program Guidelines and this Agreement, the terms of this Agreement shall control.

(h) 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.

(i) Changes in Law or Regulation.

This Agreement is subject to such modifications as may be required by change in federal or Colorado state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and made a part of this Agreement on the effective date of such change, as if fully set forth herein. 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) Third Party Beneficiaries.

It is specifically agreed among the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any claim under this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

(k) No Waiver of Rights.

A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

(l) No Waiver of Governmental Immunity.

Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the County or to the District, their officials, employees, contractors, or agents, or any other person acting on behalf of the County

or the District and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.

(m) Independent Entities.

The Parties shall perform all services under this Agreement as independent entities and not as an agent or employee of the other Party. It is mutually agreed and understood that nothing contained in this Agreement is intended, or shall be construed as, in any way establishing the relationship of co-partners or joint ventures between the Parties hereto, or as construing either Party, including its agents and employees, as an agent of the other Party. Each Party shall remain an independent and separate entity. Neither Party shall be supervised by any employee or official of the other Party. Neither Party shall represent that it is an employee or agent of the other Party in any capacity.

**REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.**
**SIGNATURE PAGE FOLLOWS**

**IN WITNESS WHEREOF**, the County and the District have each caused this Agreement to be executed and delivered as of the date indicated above:

**COUNTY OF _____**

By: _____
_____, Chair
Board of County Commissioners

Attest:

_____
Clerk to the Board

APPROVED AS TO FORM:

_____
County Attorney

**COLORADO NEW ENERGY IMPROVEMENT DISTRICT**

By: _____
Paul Scharfenberger, Chairman of the Board

Attest:

_____
Name: _____
Title: _____

Exhibit A
County Resolution

**RESOLUTION 2015-__**

**A Resolution Concerning the Authorization of the Colorado New Energy Improvement District to Conduct its New Energy Improvement Program, called Colorado Commercial Property Assessed Clean Energy (CoPACE), within _____ County ("County")**

Recitals

A. C.R.S. §§ 32-20-101 *et seq*. establishes the Colorado New Energy Improvement District (the "District") and provides for the creation of a new energy improvement program, which the District has named "CoPACE" or the Colorado Commercial Property Assessed Clean Energy program.

B. Pursuant to C.R.S. § 32-20-105(3), the District may only conduct the CoPACE program in the County if the Board of County Commissioners ("Board") authorizes it do so by resolution.

C. The Board wishes to authorize the District to conduct the CoPACE program in the County.

D. The District and County have agreed on the terms of the CoPACE NEID-County Participation Agreement in the form attached hereto (the "Participation Agreement").

THEREFORE, THE BOARD RESOLVES:

The Colorado New Energy Improvement District shall be authorized to conduct the CoPACE program in the County in accordance with the Participation Agreement.

The Board hereby: (a) adopts the above recitations as findings of the Board; (b) authorizes the County Attorney, in consultation with the Chair, to make such changes as may be needed to the Participation Agreement in order to correct any nonmaterial errors or language that do not materially increase the obligations of the County; (c) authorizes the Chair to execute the Participation Agreement following review and approval by the County Attorney; and (d) authorizes the Chair, Vice Chair, or designee to execute any and all other necessary letters, orders, or documents as may be required to facilitate the successful implementation of the CoPACE program in the County.

ADOPTED on this ___ day of _____, 2015.

**BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY:**

_____
_____, Chair

_____
_____, Vice Chair

_____
_____, Commissioner

ATTEST:

_____
Clerk to the Board