AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Participation Agreement; Colorado C-PACE, Colorado

Action Requested: Motion

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Resolution opting in to the Colorado CoPACE program.

Fiscal Impact: none

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 9/21/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 9/20/17

Reveiwed by: Discharge Date: 9/21/2017 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 9/22/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 10/3/2017

Revised April 2015

COLORADO C-PACE NEID-COUNTY PARTICIPATION AGREEMENT

THIS COLORADO C-PACE NEID-COUNTY PARTICIPATION AGREEMENT (the "**Agreement**") is made and entered into as of the ____ day of _____, 2017, by and between the County of Gunnison, 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 "**Colorado C-PACE Act**" or the "**Act**") established the District and a commercial property assessed clean energy (C-PACE) program for the State of Colorado; and

WHEREAS, C-PACE 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 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 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 C-PACE 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 C-PACE Act, it is hereby agreed as follows:

Section 1. Definitions.

(a) "**C-PACE Assessment**" means the C-PACE 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 C-PACE Act and in the Program Guidelines.

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

(e) "**Program Guidelines**" means the rules, regulations and guidelines promulgated by the District to implement the C-PACE program pursuant to the C-PACE 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 C-PACE Act, the District:

(1) shall develop Program Guidelines governing the terms and conditions under which private financing will be made available to the C-PACE 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 C-PACE program for energy improvements under the C-PACE 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 C-PACE Act, and

(2) provide the notification and conduct the hearing required by C.R.S. § 3220-106(3) of the C-PACE Act prior to imposing a special C-PACE Assessment on any Participating Property.

(c) Assessment and Financing Agreement for Project.

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 C-PACE 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 C-PACE program, including risks related to the failure of the property owner to pay the C-PACE 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 C-PACE Assessment, including program application and other fees and charges imposed by the District to administer the C-PACE 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.

(d) Establish C-PACE Assessments and Assessment Units.

(1) With respect to each C-PACE Assessment placed on a Participating Property, the District shall determine the amount of the C-PACE Assessment and establish the appropriate special assessment units and specify the method of calculating the C-PACE Assessment for each Participating Property. The District's Board of Directors shall approve the specifics of the applicable C-PACE Assessment including, without limitation, the amount of the C-PACE 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 C-PACE 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. § 3220-106(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 no later than December 1st 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 C-PACE 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) (which states in part "property taxes may be paid in full or in two equal

installments, the first such installment to be paid on or before the last day of February and the second installment to be paid no later than the fifteenth day of June.”), and C.R.S. 39-10-104.5(3)(b) (which states in part “if the full amount of the of taxes is paid in a single payment on or before the last day of April, then no delinquent interest shall accrue on any portion of the taxes.”), and the date on which the assessment is expected to be satisfied in full. Once the CPace Assessment roll for each participating property is certified to the County Treasurer, the Assessment installments become part of the property tax on each participating property and payment will be collected as required by C.R.S. 39-10104.5(2) and C.R.S. 39-10-104.5(3)(b).

(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 Assessor.

Section 3. Obligations of the County.

(a) Billing of C-PACE Assessment.

Upon receiving the certified assessment rolls from the District, the County Treasurer shall add the amounts required to be paid by owners of the Participating Properties burdened by such C-PACE 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 C-PACE Assessments in the same manner and at the same time as it bills its real property taxes. The CPACE 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. The property taxes and assessment payments must paid in full – no partial payments will be accepted except as described in C.R.S. 39-10-104.5(2).

(2) Billed C-PACE Assessment amounts shall be collected in the same manner and at the same time 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 C-PACE 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 C-

PACE 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 C-PACE 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 C-PACE 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 retain a collection fee as specified in C.R.S. § 30-1102(1)(c) for each C-PACE Special Assessment and delinquencies that it collects as part of the program.

(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 C-Pace Assessment, the County Treasurer shall advertise and sell the assessed eligible real property tax lien in accordance with Title 39, C.R.S. 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 sale 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.

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

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 C-PACE program, such as including C-PACE 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.

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 C-PACE Assessments have been paid in full or deemed no longer outstanding. As authorized by C.R.S. § 32-20-

105(3), the Board of County Commissioners of the County may adopt a resolution deauthorizing the District from conducting the program within the County. If the County adopts a deauthorizing resolution, the County shall continue to meet all of its obligations under this Agreement and Article 20, Title 32, C.R.S., as to all program financing obligations existing on the effective date of the deauthorizing resolution until any and all C-PACE special assessments within the County have been paid in full and remitted to the District.

Section 5. Default.

Each Party shall give the other Party written notice of any breach of any covenant or term of this Agreement and shall allow the defaulting Party thirty (30) calendar 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 thirty (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 C-PACE 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:
Gunnison County
Matthew Birnie, County Manager
200 E. Virginia Ave
Gunnison, CO 81230

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

(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.

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 GUNNISON

By: _____
Phil Chamberland, Chairperson
Board of County Commissioners

Attest:

_____
Deputy Clerk to the Board

APPROVED AS TO FORM:

_____
David Baumgarten, County Attorney

COLORADO NEW ENERGY IMPROVEMENT DISTRICT

By: _____
Paul Scharfenberger, Chairman of the Board

Attest:

_____
Jeffrey King, Recording Secretary

Exhibit A

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

RESOLUTION 2017-___

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 (C-PACE), WITHIN GUNNISON COUNTY ("COUNTY")

Recitals

A. WHEREAS, 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 "C-PACE" or the Colorado Commercial Property Assessed Clean Energy program.

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

C. WHEREAS, The Board wishes to authorize the District to conduct the C-PACE program in the County.

D. WHEREAS, The District and County have agreed on the terms of the Colorado C-PACE NEIDCounty 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 CPACE 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 CPACE program in the County.

ADOPTED on this ___ day of _____, 2017.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Phil Chamberland, Chairperson

By: _____
Jonathan Houck, Vice Chairperson

By: _____
John Messner, Commissioner

ATTEST:

_____
Deputy County Clerk