



CO L O R A D O

New Energy Improvement District

Commercial Property Assessed Clean Energy Program

January 2024

Colorado C-PACE Capital Provider Application & Participation Agreement Package

*Note: Unless otherwise directed, CO CPACE will post the primary point of contact information given in this application on the [NEID](#) and [CO PACE](#) website.



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About

The Colorado C-PACE program uses an “Open Market” financing structure whereby property owners have the flexibility to select their preferred private capital provider for each individual project. No state funds are made available for financing C-PACE projects. No exclusivity or preferred status will be given to capital providers; the property owner retains the right to choose the type and provider of financing that works best for them.

Note: The New Energy Improvement District, is the special district governing the Colorado C-PACE program, and reserves the right to remove any capital provider from the program if they are found to have submitted false or misleading information on the capital provider agreement and participation form or are in violation of best practices of the Colorado PACE program.

Instructions

Please complete the sections in full: 1 (Information), 2 (Agreement) and 3 (Signature). Once completed, please finalize the official participation agreement, sign and date with an authorized signer at the firm. The NEID works with a special district management firm - Clifton Larson Allen, who is available to answer any questions specific to the application and approval process. Once the complete application has been received and approved by the NEID for acceptance, the ability to transact in the program occurs within 1-2 business days, along with being officially listed under the program website.



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Part 1: Colorado C-PACE Capital Provider Information

Application for Participation in Colorado C-PACE program as an approved capital provider.

Capital Provider Information

1. Capital provider's legal business name: _____
2. Authorized signer for the capital provider (in many cases, this will be different than the C-PACE transaction staff contacts):
 - a. Full name: _____
 - b. Title: _____
 - c. Years with the firm: _____
 - d. Email address: _____
 - e. Phone number: _____
3. Business Information, where the business is legally registered
 - a. Business address (where the business is legally registered):
Street Address: _____
City: _____ State: _____ Zip: _____
 - b. Main business phone number: _____
 - c. Business email address: _____
4. Colorado C-PACE program information
 - a. Public address for Colorado C-PACE program (if different from legal business address):
Note: this will be available on website unless directed otherwise
Street Address: _____
City: _____ State: _____ Zip: _____
 - b. Names and contact information of staff available to work on C-PACE project transactions:



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Note: This information will be publicly available unless otherwise requested.

i. Staff #1 Name: _____

Colorado/in-state street address (if applicable):

City: _____ State: _____ Zip: _____

Phone number: _____

Email address: _____

Additional contact information (phone/email) (required):

ii. Staff #2 Name: _____

Colorado/in-state street address (if applicable):

City: _____ State: _____ Zip: _____

Phone number: _____

Email address: _____

Additional contact information (phone/email):



3. Description of the capital provider's primary business operations:

- Federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union
- Insurance company authorized to conduct business in one or more states
- Registered investment company, registered business development company, or a Small Business Administration small business investment company
- Publicly Traded Entity
- A Private entity

If a private entity:

- a. Please provide capital under management, and capital available for Colorado C-PACE program: _____
 - b. Must have at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending) or have a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending.
 - c. Must be able to provide independent certification as to availability of funds; and provide documentation on the lending experience of the institution.
4. Please describe any additional information for the NEID to be aware of regarding the firm's internal compliance procedures (KYC, AML, OFAC etc.).



Capital Provider Additional Information

1. Relevant professional references, please provide at least (2) references that can speak to the professional capabilities of the capital provider:

a. Reference #1 (required)

Name: _____

Title: _____

Company Name: _____

Phone: _____

Email: _____

Project Name: _____

Project type:

Energy Efficiency

Solar

Combined

Other: _____

b. Reference #2 (required)

Name: _____

Title: _____

Company Name: _____

Phone: _____

Email: _____

Project Name: _____

Project type:

Energy Efficiency

Solar

Combined

Other: _____



c. Reference #3 (optional)

Name: _____

Title: _____

Company Name: _____

Phone: _____

Email: _____

Project Name: _____

Project type:

Energy Efficiency

Solar

Combined

Other: _____

2. Capital available to devote to the Colorado C-PACE market (non-binding):

\$ _____

a. Capital provider's years in business: _____

b. Capital provider's total assets & institution size: \$ _____

3. Does your institution currently provide lending to other C- PACE programs:

Yes

No

If yes, provide contact information:

Program Name: _____

C-PACE Contact Name: _____

C-PACE Contact Email: _____

C-PACE Contact Phone: _____

Part 2: Participation Agreement

This *Participation Agreement* (“Agreement”) is entered into by and between the *Colorado New Energy Improvement District*, an independent body corporate and politic of the State of Colorado established under the CoPACE Act (as defined below) (the “District”), and _____ (the “Applicant” or “QCP”) (together, the “Parties”). This Agreement shall be effective on the date of mutual execution hereof by the Parties (“Effective Date”).

Whereas, C.R.S. §§ 32-20-101 *et seq.* (the “CoPACE Act”) established the District and a commercial property assessed clean energy program in the State of Colorado (the “Colorado C-PACE Program” or “Program”), which the District has implemented; and

Whereas, the Colorado C-PACE Program has established eligibility criteria for private third-party capital providers’ participation in the Program; and

Whereas, District-approved private third-party capital providers (“Qualified Capital Providers”) can participate in the Program by working with real property owners to underwrite one or more new energy improvement projects (each a “Project”) through the Colorado C-PACE Program or by financing pre-approved Projects without a pre-selected capital provider; and

Whereas, Applicant has completed an application for and desires to become a “Qualified Capital Provider” (“QCP”) in the Colorado C-PACE Program.

Whereas, the District seeks to designate Applicant as a “Qualified Capital Provider” in the Program.

Now, therefore, for and in consideration of the mutual covenants and agreements set forth in this Agreement and in order to effectuate the purposes of the CoPACE Act, the following is hereby agreed to by the Parties:

- 1. Designation of Applicant as Qualified Capital Provider.** The District hereby designates and approves Applicant as a Qualified Capital Provider in the Colorado C-PACE Program subject to QCP’s compliance with the terms and conditions of this Agreement and any other requirements, terms or conditions the District may set forth for the Program, including in the Program Guide (as defined below). In consideration of being designated as a Qualified Capital Provider and in further consideration of being provided Project data and related information to formulate financing proposal(s) to owner(s) of eligible real property (“Property Owner”) applying for financing through the C-PACE Program, QCP agrees to comply with the terms and conditions set forth in this Agreement and any other requirements, terms or conditions the District may set forth for the Program, including in the Program Guide.



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2. **Definitions.** Terms used but not defined in this Agreement that are defined in the CoPACE Act shall have the meaning given to them in the CoPACE Act, as the same may be amended from time to time.
 - a. **“Application”** means the Capital Provider Application submitted to the District by the Applicant.
 - b. **“Confidential Information”** shall mean all confidential or proprietary written, recorded, electronic, visual information or data (including without limitation energy, structural research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, pricing, business and process information or data, trade secrets, discoveries, ideas, or designs,) provided to QCP or its Representatives by the District or its Representatives), regardless of whether such confidentiality or proprietary status is indicated or the specific words “confidential” or “proprietary” are used in the course of the exchange of such information or data. Without limiting the aforesaid, the existence of discussions between the District or its Representatives and QCP or its Representatives regarding a proposed Project and the status of such discussions shall constitute Confidential Information hereunder.
 - c. **“PA” or “Program Administrator”** shall mean the District’s then-current Program Administrator of the Colorado C-PACE Program, designated by the District in accordance with the provisions of the CoPACE Act. As of the Effective Date, the Parties acknowledge that the current PA of the Program is Sustainable Real Estate Solutions, Inc., a Delaware corporation (“SRS”). Nothing in this Agreement shall prohibit the District from designating a PA other than SRS or from designating more than one firm or entity as a PA under the Program.
 - d. **“Person”** shall be broadly interpreted to include, without limitation, any corporation, limited liability company, partnership, limited partnership, limited liability partnership, governmental agency, or other legal entity or individual.
 - e. **“Program Guide”** means the Program Guide for the Colorado C-PACE Program (<https://copace.com/resources/>), as the same may be amended from time to time.
 - f. **“Representatives”** shall mean as to any Party, its directors, officers, employees, agents and advisors (including, without limitation, financial advisors, attorneys, accountants, engineers, technicians and vendors), and, in the case of the District shall include the PA and any Representatives of the PA.



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- 3. Compliance with Program Guide.** QCP has reviewed the Program Guide and represents that it understands the terms and conditions set forth therein. QCP agrees to offer its financing and other products in accordance with the terms and conditions of the Program Guide. QCP acknowledges that the District (or PA operating with approval of the District) may revise and update the Program Guide. Upon QCP's receipt of written notice of revisions and updates to the Program Guide, QCP comply with the same; provided however, that no such revisions or updates shall apply to C-PACE financing, that closed prior to QCP's receipt of written notice of the revised/updated Program Guide, unless otherwise agreed to in writing by the Parties.
- 4. True and Accurate Information.** QCP is required to ensure, update, and maintain the truthfulness, accuracy and completeness of all information that it provides to the District on its Application. In addition, during the term of this Agreement, QCP shall post and maintain on a public-facing page of its website the name of a QCP representative and their contact information (specifically including a phone number and e-mail address) for Persons interested in financing for the Program to contact.
- 5. Financing.** QCP assumes full and sole responsibility for determining whether to provide financing through the Program for a Project and for determining the financial ability of a Property Owner to repay the QCP's financing. QCP also assumes full and sole responsibility and for distributing the funds for each Project financed by QCP through the Program in accordance with the terms agreed to by the Parties and the Property Owner in the Assessment and Financing Agreement for the Project. The District and its Representative(s) assumes no responsibility or liability for any underwriting functions associated with QCP's financing(s).
- 6. Confidentiality and Non-Use.** In consideration of receiving Confidential Information, the QCP agrees as follows:

 - a. QCP shall hold confidential and not disclose Confidential Information to any Person, without the prior written consent of the District or (PA operating with approval of the District). If such consent is given, QCP shall obtain a written commitment from, the Person receiving the Confidential Information to be bound by the restrictions on use and non-disclosure set forth in this agreement notwithstanding the foregoing,
 - b. QCP may disclose Confidential Information to its Representatives who are actively and directly participating in its evaluation of the Project or who otherwise need to know the Confidential Information for the purpose of the Project; such disclosure shall be limited to the



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Confidential Information necessary for the Representatives to perform their assigned functions.

- c. QCP shall cause its Representatives to observe the terms of this Agreement and QCP shall be responsible and shall indemnify the District for any breach of the terms of this Agreement by it or its Representatives;
 - d. QCP shall return or destroy all Confidential Information (including all copies thereof inclusive of all electronic files) within ten (10) days of receipt of a written request made by the District or PA, except for one record copy that may be maintained by the QCP in its legal archives;
 - e. QCP shall not use Confidential Information for any purpose other than directly in connection with the Project and as expressly authorized in writing by the District or PA.
 - f. QCP shall not remove, overprint or deface any notices of copyright, trademark, logo or other proprietary identifications or notices of confidentiality, from any originals or copies of the Confidential Information
- 7. Exceptions to the Confidentiality and Non-Use Obligations.** The obligations imposed by Section 6 hereof shall not apply, or shall cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information:
- a. was known to QCP or was already in QCP's lawful possession without the obligation of confidentiality prior to the receipt of the Confidential Information; from the District or its Representatives;
 - b. was or becomes, through no breach of QCP's obligations hereunder, known to the public;
 - c. becomes known to the QCP from sources other than the District or its Representatives under circumstances that do not involve any breach of any confidentiality or non-use obligation; or,
 - d. is independently developed by QCP, without violating QCP's obligations in this Agreement as evidenced by written records thereof.
 - e. Confidential information, as a whole, shall not be deemed to be in the public domain merely because any part of said Confidential Information is embodied in general disclosures or because individual features,



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components or combinations thereof are now or become known to the public.

- f. It shall not be a breach of the confidentiality obligations set forth in this Agreement for the QCP to disclose Confidential Information where, but only to the extent that, such disclosure is required by law or applicable legal process, provided in such case the QCP shall (i) give the earliest written notice possible to the Property Owner, the District and the PA that such disclosure is or may be required and (ii) reasonably cooperate in protecting such confidential or proprietary nature of the Confidential Information which is subject to disclosure.
8. **Term of the Agreement.** This Agreement shall commence on the Effective Date and shall continue until terminated in writing by either QCP or the District. QCP status shall commence on the Effective Date.
9. **No Guarantee of Additional Business.** The District does not make any representations or guarantees that QCP will obtain additional business opportunities through its participation in the Program.
10. **Relationship of the Parties.** By submitting the written Application to the District and executing this Agreement, QCP does not become an agent, employee, or representative of the District or the Program. The Parties shall not be considered to be joint venturers, partners, agents, servants, employees, fiduciaries, franchisors, or representatives of each other, and no Party shall have the right or power to bind or obligate the other Party on any contractual or other matters
11. **No Further Agreements Hereunder.** The District shall not be under any obligation to enter into any further agreements with QCP of any nature whatsoever as a result of this Agreement. The District reserves the right, in its sole discretion, to decline, retract, or reject at any time any proposal or tentative agreement which has not yet become legally binding and shall have no obligation to proceed with any Project until such time as final agreements are executed.
12. **No Representations and Warranties.** The District and its Representatives operating on the District's behalf make no representations or warranties express or implied, of any kind with respect to materials and information provided by the District and its Representatives to QCP and QCP's Representatives including Confidential Information, and the District and its Representatives assume no liability whatsoever for any errors or omissions in any materials and information provided by the District and its Representatives



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to QCP. The Parties specifically acknowledge and agree that the District and its Representatives shall not be liable to QCP or its Representatives whether in contract, tort or otherwise for loss of profits, consequential, special or punitive damages, based on the suitability, accuracy, or completeness of any materials and information provided by the District and its Representatives, including Confidential Information,

13. **Costs.** QCP shall be responsible for all of its own costs and expenditures incurred in the Project application and underwriting processes and during any period during which the QCP maintains its QCP status with the Program. QCP shall have no right to make any claim(s) whatsoever under this Agreement for reimbursement of costs for any efforts expended.
14. **Program Administration Fee.** A fee equal to 2.5% of the Project finance amount/refinance amount (subject to a minimum fee of \$5,000 and a maximum fee of \$75,000 per Project) shall be included in each Project to be paid by the Property Owner. Such fee shall be disbursed by the QCP to the District (or to the title company engaged by the District to conduct Program-related Project closings on behalf of the) at the time of Project finance closing. This fee may be modified by the District from time to time; the modified fee shall apply to any C-PACE financing that closes following QCP's receipt of written notice of the modified fee, unless otherwise agreed to in writing by the Parties.
15. **County Servicing Fee.** For its billing and collection support services rendered, the county will collect a statutory "servicing fee" equal to one percent (1%) of the annual C-PACE assessment payments) to be paid by the Property Owner over the term of the C-PACE financing in the normal course of the Property Owner remitting property tax payments to the County. The Parties agree that the County servicing fee shall be included in the amortization schedule included in both the Assessment and Financing Agreement (AFA) and Final Assessing Resolution (FAR).
16. **District Annual Collection Fee.** For its preparation of a certified special assessment roll on an annual basis the District imposes an annual collection fee ("Collection Fee") as disclosed in the Program Guide. The Collection Fee varies based on the total project amount / financing amount of the C-PACE financing. The Collection Fee shall be included in the amortization schedule included in both the AFA and FAR.
17. **Licensing and Registration.** Compliance with all laws. QCP shall comply with all applicable laws, regulations, and ordinances of the United States, the State of Colorado, and local jurisdictions in which Projects financed by QCP are located. Without limiting the foregoing, QCP shall be and remain licensed,



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authorized to conduct business, and in good standing in all jurisdictions in which it conducts business, including the State of Colorado. As a condition of approval of the Application and at any time during the term of this Agreement, the District or PA may request certificates of good standing or other written copies of all relevant licenses held by QCP or request verification of QCP's authority to conduct business in applicable local jurisdictions and the State of Colorado. QCP agrees to promptly provide the requested documentation to the District or to the PA

- 18. Governing Law.** This Agreement is made subject to and shall be construed and enforced under the laws of the State of Colorado, without giving regard to conflict of laws or choice of law principles and that the state courts of the State of Colorado shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement or the Confidential Information with each Party irrevocably consenting to the jurisdiction thereof for any actions, suits or proceedings arising out of, or relating to, this Agreement or the Confidential Information, and each Party irrevocably waives its rights to jury trials with respect thereto.
- 19. Right to Rescind.** On and after the Effective Date, QCP may hold itself out to the public as a Qualified Capital Provider in the Program; provided, however, that at Any time and in its sole discretion, the District reserves the right to revoke the "Qualified Capital Provider" status of QCP. Notice of the determination to revoke QCP status shall be given in writing by the District or the PA, on behalf of District, to QCP. If "Qualified Capital Provider" status is revoked, the District shall have no further obligations to the QCP hereunder or under the Program and QCP shall have no further right to hold itself out as a "Qualified Capital Provider" under the Program. No such revocation shall apply to any C-PACE assessment liens outstanding at the time such notice is given.
- 20. Remedies.** Without prejudice to the rights and remedies otherwise available to either Party, each Party shall be entitled to seek equitable relief by way of injunction or specific performance in the event a Party breaches, or threatens to breach this Agreement; if a Party seeks equitable relief, the other Party shall not plead in defense thereto that there would be an adequate remedy at statutory or common law. All of the Party's rights and remedies shall be cumulative and may be exercised separately or concurrently.
- 21. Non-Publicity.** All media releases, public announcements and other disclosures relating to any Project including promotional or marketing material, but excluding announcements intended solely for internal distribution or to meet legal or regulatory requirements, shall be coordinated with and approved by the District or PA prior to release.



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- 22. Paragraph Captions.** The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 23. Agreement as Complete Integration.** The Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any Representative of the District at variance with the terms of this Agreement will have any force or effect or bind the District.
- 24. Severability.** Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 25. Notices.** Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth on the signature page(s) below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.
- 26. Colorado Open Records Act Compliance.** Notwithstanding any term of this Agreement to the contrary, QCP acknowledges that the District is subject to the provisions of the Colorado Open Records Act, C.R.S. §§ 24-72-201 et seq. (“CORA”), as set forth in C.R.S. § 32-20-104(4). Therefore, any information received from QCP (including without limitation any information relating to Property Owner or a specific Project such as financial information, budgets, plans, etc.) may be considered public records and may be subject to disclosure under CORA, except for records and information falling within one of the exemptions therefrom. The District is required to and shall comply with all applicable laws including, without limitation, CORA in relation to any records, documents and information related to the Program and QCP’s dealings and relationship with any Property Owner, the PA or the District. Nothing in this Agreement shall be deemed or construed as a limitation on the District’s discretion relating to compliance with CORA or other applicable law. Nevertheless, the District will use reasonable efforts to provide notice to the QCP of any request under CORA which involves a Project for which the QCP has



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provided financing or is involved in active project underwriting, but the District shall have no liability arising out of its failure to do so in a timely manner or at all. Without limiting the foregoing, QCP acknowledges and agrees that the burden of establishing the applicability of the trade secrets confidential commercial and financial data/ exemption is on the party resisting disclosure. Accordingly, should QCP seek to assert that exemption to disclosure, QCP shall be required to advance funds to the District sufficient to cover all anticipated costs of CORA-related legal costs or other costs of defense.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

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In witness thereof, the District and QCP have executed this Participation Agreement as of the date(s) set forth below by and through their duly authorized representatives.

Colorado New Energy Improvement District

By _____

Name: _____

Title: Authorized signatory

The foregoing Participation Agreement was acknowledged before me this _____ day of _____, 202__, by _____, as an authorized signatory of the Colorado New Energy Improvement District, an independent body corporate and politic of the State of Colorado.

Address for notice:

Colorado New Energy Improvement District
c/o Colorado Energy Office
1600 Broadway, Suite 1960
Denver, CO 80202

With a copy to:

Michow Guckenberger McAskin LLP
5299 DTC Blvd, Suite 300
Greenwood Village, CO 80111



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Qualified Capital Provider:

_____, a _____

By _____

Name _____

Title _____

State of _____

County of _____

The foregoing Participation Agreement was acknowledged before me this _____
day of _____, 202_____, by _____.

Witness my hand and official seal.

Notary Public Signature: _____

My commission expires: _____

Notary Public Seal: