COLORADO C-PACE NEID-COUNTY PARTICIPATION AGREEMENT

THIS COLORADO C-PACE NEID-COUNTY PARTICIPATION AGREEMENT (the "**Agreement**") is made and entered into by and between the City and County of Denver, a municipal corporation and home rule city of the State of Colorado ("**Denver**"), 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, the implementation of the C-PACE program occurs through the establishment of a state-wide District – organized and operated as a single entity – to benefit all participating counties, who opt in into the District; 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 City Council for Denver has adopted an ordinance in the form attached hereto as **Exhibit A**, authorizing the District to conduct the C-PACE program within Denver and authorizing Denver to enter into this Agreement with the District; and

WHEREAS, as set forth in the ordinance, the adoption of the ordinance by the Denver City Council fulfills the statutory requirement set forth in C.R.S. § 32-20-105(3).

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, as defined by this agreement 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. § 32-20-106(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 District shall inform the property owner 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 in accordance with C.R.S. § 32-20-106(5), 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. § 32-20-106(1). Costs incurred for any property not approved to participate may not be included in a certified assessment roll.

(e) The District shall cause to be prepared and certified under the District's corporate seal to the Denver Assessor 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 Denver Assessor. Such assessment roll shall specify for the Participating Property to which it pertains the amount of each installment of principal and interest, provided that each

installment will become due on the date or dates that the Participating Property taxes are payable under C.R.S. § 39-10-104.5(2) (once the C-Pace Assessment roll for each participating property is certified to the Denver Treasurer, the Assessment installments shall be billed as a special assessment on each participating property and payment will be collected as required by C.R.S. § 39-10-104.5(2) and C.R.S. § 39-10-104.5(3)(b)).

(f) Filing Assessment with County Clerk & Recorder.

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

Section 3. Obligations of Denver.

(a) Billing of C-PACE Assessment.

Upon receiving the certified assessment rolls from the District, the Denver 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 Denver Treasurer shall bill the C-PACE Assessments in the same manner and at the same time as it bills its real property taxes. The C-PACE 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 C-PACE Assessment amounts shall be collected in the same manner and at the same time as the property taxes of Denver 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 C.R.S. § 32-20-107(1). Delinquent interest shall be collected at the same rate as delinquent property taxes as specified in C.R.S. § 39-10-104.5 (3)(c), as may be amended. Penalties and interest on delinquent C-PACE Assessments shall be charged in the same manner and rate as Denver charges for delinquent real property taxes.

(3) The Denver Treasurer shall remit all amounts collected with respect to the C-PACE Assessments within any calendar month to the District in the same manner as taxes are distributed in accordance with C.R.S. §39-10-107(1)(a) less the Denver Collection Fee described in Section 3(c) of this Agreement. Denver 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 Denver agree to provide each other with such reasonable information as they

may request and the District and Denver agree to provide such information in an electronic format satisfactory to the other.

(c) Denver Collection Fee.

The Denver Treasurer shall retain a collection fee as specified in C.R.S. § 30-1-102(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 Denver Treasurer shall advertise and sell the delinquent installment(s) 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.

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

Denver shall use good faith efforts to assist the District in local marketing and outreach efforts and provide limited technical assistance to building owners, developers, and the local business community to encourage participation in the C-PACE program, such as including C-PACE program information on Denver's website, distributing information from appropriate Denver officials to local associations and stakeholder groups representing developer, building owners, businesses regarding the program, and conducting one or more business roundtable events.

Section 4. Insurance.

(a) General Conditions. The District agrees to secure, within 30 days following the execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The District shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten through the Colorado Special Districts Property and Liability Pool (the "SDA Pool"). Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Section 7(d) below. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the SDA Pool, the District shall provide written

notice of cancellation, non-renewal and any reduction in coverage to the parties identified in Section 7(d) below by certified mail, return receipt requested within three (3) business days of such notice by the SDA Pool and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the District. The District shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the District. The District shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(b) Proof of Insurance. The District shall provide a copy of this Agreement to its insurance agent or broker. The District may not commence services or work relating to the Agreement prior to placement of coverage. District certifies that the certificate of insurance that will be provided, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of District's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(c) Commercial General Liability. The District shall maintain a Commercial General Liability insurance policy with limits of $1,000,000 for each occurrence, $1,000,000 for each personal and advertising injury claim, $1,000,000 products and completed operations aggregate, and $1,000,000 policy aggregate.

(d) Additional Insureds. The policy shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as an additional insured.

(e) Waiver of Subrogation. The SDA Pool shall waive subrogation rights against the City.

Section 5. Term and Termination.

The term of this Agreement shall commence upon the Effective Date as set forth on the City signature page. 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. The Parties recognize and agree that with respect to the City and County of Denver, the Denver Ordinance attached hereto as **Exhibit A** satisfies the statutory requirement set forth in C.R.S. § 32-20-105(3) for a opt-in resolution of a board of county commissioners prior to conducting the C-PACE program within the boundaries of any specific county. As authorized by C.R.S. § 32-20-105(3), the City Council of Denver may adopt a resolution deauthorizing the District from conducting the

program within Denver. If Denver adopts a deauthorizing resolution (or ordinance), Denver 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 action until any and all C-PACE special assessments within Denver have been paid in full, or deemed no longer outstanding.

Section 6. 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 7. 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 be amended 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 Denver:

Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, Colorado 80202

With a Copies to:

Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

Manager of Finance
City and County of Denver
201 W. Colfax, Dept. 1010
Denver, Colorado 80202

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:

Marcus McAskin
Michow Cox & McAskin LLP
6530 S. Yosemite Street, Suite 200
Greenwood Village, CO 80111

(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 Denver.

(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 Denver, 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 Denver or to the District, their officials, employees, contractors, or agents, or any other person acting on behalf of Denver 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 PAGES FOLLOW

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By_____

_____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By_____

By_____

By_____

District signature page to COLORADO C-PACE NEID-COUNTY PARTICIPATION AGREEMENT (CITY & COUNTY OF DENVER)

DISTRICT:

COLORADO NEW ENERGY IMPROVEMENT DISTIRCT, an independent body corporate and politic of the State of Colorado

By: _____
Paul Scharfenberger, Chair

ATTEST:

_____
Jeffrey King, Recording Secretary

Contract Control Number: FINAN-201630180-00

EXHIBIT A

BY AUTHORITY

ORDINANCE NO. _____ COUNCIL BILL NO. CB16-0761

SERIES OF 2016 COMMITTEE OF REFERENCE:

FINANCE AND GOVERNANCE

A B I L L

An Ordinance 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 the City and County of Denver ("Denver").

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

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.

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 authorizes it do so by resolution.

WHEREAS, Denver wishes to authorize the District to conduct the C-PACE program in Denver and hereby finds and determines that the adoption of this Ordinance by City Council shall fulfill the statutory requirement to adopt a resolution as set forth in C.R.S. § 32-20-105(3).

WHEREAS, the District and Denver have agreed on the terms of the Colorado C-PACE NEID-County Participation Agreement in the form to be filed in the City Clerk's office (the "Participation Agreement").

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Participation Agreement between the City and County of Denver and Colorado New Energy Improvement District, in the words and figures contained and set forth in that form of Participation Agreement available in the office and on the web page of City Council, and to be filed in office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. _____ is hereby approved.

Section 2. The Colorado New Energy Improvement District shall be authorized to conduct the C-PACE program in Denver in accordance with the Participation Agreement.

Section 3. The City Council, performing the duties of a board of county commissioners, hereby: (a) adopts the above recitations as findings of the City Council; (b) authorizes the City

EXHIBIT A

Attorney, in consultation with Manager of Finance and the Executive Director of the Office of Economic Development, 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 Denver; (c) authorizes the appropriate City officers to execute the Participation Agreement following review and approval by the City Attorney; and (d) authorizes the Manager of Finance to execute any and all other necessary letters, orders, or documents as may be required to facilitate the successful implementation of the C-PACE program in Denver.

COMMITTEE APPROVAL DATE: September 14, 2016

MAYOR-COUNCIL DATE: September 20, 2016

PASSED BY THE COUNCIL:

_____

_____ - PRESIDENT

APPROVED: _____ - MAYOR

_____

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2016;

_____

PREPARED BY: Jo Ann Weinstein, Assistant City Attorney DATE: September 22, 2016

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to §3.2.6 of the Charter.

Denver City Attorney

BY: _____, Assistant City Attorney DATE: _____