



# Garden State C-PACE Program Guidelines

New Jersey Economic Development Authority

36 West State Street,

Trenton, NJ 08625

(609) 858-6700

[www.njeda.gov](http://www.njeda.gov)

[Gardenstatepace@njeda.gov](mailto:Gardenstatepace@njeda.gov)

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# ARTICLE I. OVERVIEW

## Section

### 1.01 Introduction

N.J.S.A. 34:1B-374 to -382 (the “C-PACE Act”) established a C-PACE program in New Jersey. The Garden State Commercial Property Assessed Clean Energy (“C-PACE”) Program (“Garden State C- PACE Program” or the “Program”) provides a new form of financing for renewable energy, energy efficiency, water conservation, and certain types of resiliency-related improvements for New Jersey. The Program works by enabling eligible commercial, industrial, agricultural, and certain multi-family residential real property owners to access financing to undertake these kinds of improvements on their properties and repay the financing through the payment of an additional assessment to their municipality, similar to their real property tax, sewer, or water bill.

The C-PACE Act directs the New Jersey Economic Development Authority (“Authority”) to develop guidelines for the Garden State C-PACE Program, (as may be amended or modified from time to time, “Program Guidelines”) to include the standard forms of documentation (“Uniform Assessment Documents”) to be used by Program participants, and to implement and oversee the Program. Accordingly, the Appendices are an integral part of the Program Guidelines. The official version of the Program Guidelines and all Appendices may be found on the Authority’s Program website. Capitalized terms used in these Program Guidelines are found in Article XI unless otherwise defined herein.

### Section 1.02 Authority Program Oversight

The Authority has the responsibility for developing the Program Guidelines and determining whether proposed projects are eligible in accordance with the C-PACE Act and the Program Guidelines. The Authority does not provide any financing to borrowers under this Program, nor does the Authority approve any financing provided by lenders. As part of its role of ensuring compliance with the Program Guidelines, the Authority, in its sole discretion, may decide to contract with one or more third parties to assist the Authority. The Authority may also enter into a memorandum of agreement with one or more State of New Jersey (“State”) government agencies or instrumentalities to perform any actions the Authority may take with regard to the Program.

### Section 1.03 Interpretation

The C-PACE Act controls in the event of any inconsistency between the C-PACE Act and these Program Guidelines and any form of Uniform Assessment Document. In the event of any inconsistency between these Program Guidelines and any Uniform Assessment Document, the Program Guidelines shall control. Unless otherwise required by law, if the Program Guidelines are changed or updated by NJEDA after a C-PACE financing closes, the Program Guidelines in effect at the time the Assessment Agreement was signed shall control.

## **ARTICLE II. PROGRAM ELIGIBILITY REQUIREMENTS**

### **Section 2.01 Eligible Property**

“Property” means:

- A. One of the following:
  - 1. industrial, agricultural, or commercial property;
  - 2. residential property containing five or more dwelling units;
  - 3. common areas of condominiums and other planned real estate developments as defined in N.J.S.A. 45:22A-23; or
  - 4. property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions;
- B. Within a Participating Municipality; and
- C. Upon which a C-PACE Assessment is intended to be imposed at the request of an Eligible Property Owner in connection with a C-PACE Project.

“Eligible Property” means a Property that meets the following requirements:

- A. Must not be subject to any bankruptcy proceedings;
- B. Must not be the subject of any mortgage loans with any default; and
- C. All tax payments, charges, or assessments for the Property must be current.

### **Section 2.02 Eligible Owner**

“Property Owner” means an owner of an Eligible Property who consents to a C-PACE Assessment being imposed on the Eligible Property.

“Beneficial Owner” means the owner of the building and improvements on an Eligible Property that ground leases the land underlying the building and improvement, with an initial ground lease for a term of at least 50 years.

“Eligible Owner” means a Property Owner or a Beneficial Owner that meets the following requirements as of the date when seeking the Authority’s determination that a proposed C-PACE Project is eligible:

- A. Must not be subject to any bankruptcy proceedings; and
- B. Has written consent from all mortgage lien holders on the Eligible Property for the proposed C-PACE Assessment.

### **Section 2.03 C -PACE Projects**

“C-PACE Project” means the acquisition, construction, installation, or modification of one or more of the following types of improvements (“Eligible Improvement Categories”), which shall be affixed to the Eligible Property.

“Eligible Improvement” means a single improvement within one of the Eligible Improvement Categories.

Unless the supplemental guidelines issued by the Authority provide otherwise, these Program Guidelines do not apply to: (1) refinancing of C-PACE Projects (whether financed previously by a Direct Financing or other financing), (2) new construction (that is, new improvements upon previously unimproved real property or on property on which all previous improvements have been demolished or otherwise removed), or (3) gut rehab (that is, a project that involve the removal and replacement of all interior (nonstructural) systems, equipment, components or features of a structure, whereby the existing structure will be reduced down to the basic structure or exterior shell (e.g., the foundation system; exterior walls, roofs; and interior structural components such as columns, beams, floors, and structural bearing walls), which can also include structural or nonstructural modifications to the exterior of the structure). “Retrofit Projects” shall mean all other C-PACE Projects. Eligible Improvement Categories are:

- A. Energy Efficiency Improvements: Improvements to reduce energy consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy, including, but not limited to:
  - 1. Air sealing;
  - 2. Installation of insulation;
  - 3. Installation of energy-efficient electrical, heating, cooling, or ventilation systems, including, but not limited to, air and ground source heat pump systems;
  - 4. Energy efficient water heating;
  - 5. Building modifications to increase the use of daylight;
  - 6. Energy efficient windows, doors, and glass;
  - 7. Installation of energy or water controls or energy recovery systems;
  - 8. Installation of efficient lighting equipment and/or controls; and
  - 9. Other improvements that the Authority, in consultation with the New Jersey Board of Public Utilities (“NJBPU”), determines reduce energy consumption.
  
- B. Water Conservation Improvements: Improvements that reduce water consumption, increase the efficiency of water use, or reduce water loss.
  
- C. Renewable Energy System Improvements: Improvements by which electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources:
  - 1. Green hydrogen produced from a renewable energy source, including, but not limited to, solar or wind energy;
  - 2. Solar energy;
  - 3. Geothermal energy;
  - 4. Biomass;

5. Wind energy; and
  6. Other fuels and energy sources that the Authority, in consultation with the NJBPU, determines are renewable energy fuels or sources.
- D. Energy Storage: Technology that can absorb energy, store it for a period, and thereafter dispatch the energy, including, but not limited to, battery electric storage, thermal storage, pumped hydropower, and such other forms of energy storage as may be determined by the Authority. Energy Storage shall store energy from a new or existing Renewable Energy System or Electric Vehicle Charging Infrastructure unless the Authority determines that the storing energy from a non-renewable energy system is necessary to provide a critical resilience need unique to a facility on the Eligible Property.
- E. Electric Vehicle Charging Infrastructure: Equipment designed to deliver electric energy to a battery electric vehicle or a plug-in hybrid vehicle.
- F. Stormwater Management Systems: Has the same meaning as in N.J.S.A. 40A:26B-3, which, as of the date of these Program Guidelines is: “any equipment, plant, structures, machinery, apparatus, management practices, design practices, planning activities, land, or any combination thereof, acquired, used, constructed, implemented, or operated to convey stormwater, control or reduce stormwater runoff and associated pollutants or flooding, induce or control the infiltration of groundwater recharge of stormwater, or eliminate illicit or illegal non- stormwater discharges into stormwater conveyances.”
- G. Flood Resistant Construction Improvements: Improvements that mitigate the likelihood of flood damage, including, but not limited to, the installation of break-away walls and building elevation alterations.
- H. Hurricane Resistant Construction Improvements: Improvements that enable components of structures to be in compliance with the standards for a “wind-borne debris region” adopted pursuant to the “State Uniform Construction Code Act,” N.J.S.A. 52:27D-119 et seq., or brought into compliance with a successor standard under that code.
- I. Microgrid: A group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the electric distribution system and that connects and disconnects from the electric distribution system to enable it to operate when both connected to, or independent of, the electric distribution system. The interconnected distributed energy resources that supply power to the Microgrid shall be new or existing Renewable Energy Systems unless the Authority determines that a Microgrid utilizing a non-renewable distributed energy resource is necessary to provide a critical resilience need unique to a facility on the Eligible Property.

#### **Section 2.04 Project Costs**

“Project Costs” means those costs associated with the C-PACE Project that can be financed using a C-PACE Assessment. For a Microgrid, Project Costs are limited to the Eligible Owner’s pro rata share of the Microgrid. Project Costs include:

- A. Direct Costs: Including, but not limited to, costs for the equipment, materials, and labor related to or ancillary to the purchasing, constructing, installing, modifying, or acquiring a C-PACE Project.
- B. Indirect Costs: Including, but not limited to, expenses and fees of engineers, architects, financial advisors, legal counsel, and other professionals, inspection fees and permits, and warranties and pre-paid maintenance contracts for the C-PACE Project.
- C. Financing Costs of Capital Provider: Including, but not limited to, origination fees, prepaid interest and payment reserves, closing costs, counsel fees, trustee or custodian fees, recording fees, credit enhancements, credit rating agency fees, underwriting and placement fees, appraisal fees, environmental reports, and other financing charges.

D. Program Fees: Program Fees as described in Article VI.

**Section 2.05 Direct Financing**

“Direct Financing” means Financing for a C-PACE Project pursuant to a financing agreement entered into between a Qualified Capital Provider and an Eligible Owner, or an individual or entity duly authorized by the Eligible Owner. The Direct Financing and its associated C-PACE Assessment must adhere to the following underwriting requirements:

- A. The principal amount, when combined with mortgage and other lien obligations on the Eligible Property, shall not exceed ninety (90) percent of the appraised value of the Eligible Property after including the anticipated value created by the C-PACE Project as of the date of stabilization of operations at the Eligible Property;
- B. The amount shall be a specific amount, which may not exceed the Project Costs;
- C. The maximum duration shall not exceed the Weighted Average Useful Life (“WAUL”) of the Eligible Improvements in the C-PACE Project or thirty (30) years, whichever is less. The WAUL is determined by the methods identified in Section 5.04; and
- D. Except as otherwise expressly provided in these Guidelines, the terms of repayment shall be solely determined and negotiated between the Eligible Owner and the Qualified Capital Provider. The schedule for the Eligible Owner’s repayment of the C-PACE Assessment (“Repayment Schedule”) shall be attached to the C-PACE Assessment Agreement.

**Section 2.06 Eligibility Criteria**

For a proposed project to be eligible under the C-PACE Program:

- A. The applicant proposing the project must satisfy the definition of Eligible Owner;
- B. The proposed property on which the proposed project will be located must satisfy the definition of Eligible Property;
- C. The proposed financing must satisfy the definition of Direct Financing; and
- D. Qualified Technical Reviewers have signed the Technical Review Certification Letter that the proposed project satisfies the definition of C-PACE Project and have verified the amount of Project Costs.



## ARTICLE III. QUALIFICATIONS AND RESPONSIBILITIES OF C-PACE PARTICIPANTS

### Section 3.01 Municipality

- A. To be qualified to participate in the Program, a municipality (as so qualified, a “Participating Municipality”) must adopt an Opt-In Ordinance authorizing its participation in the Garden State C-PACE Program and submit to the Authority a Participating Municipality Opt-In Notice. Once the Authority confirms that the Participating Municipality Opt-In Notice is acceptable, the Municipality shall enter into a Garden State Program Agreement with the Authority setting forth the obligations of each party under the Program. Forms of the Opt-In Ordinance and Garden State Program Agreement can be found in Appendix B and Appendix C , respectively, and the Participating Opt-In Notice can be found listed on the Program website ([www.njeda.com/c-pace/](http://www.njeda.com/c-pace/)). A list of Participating Municipalities is maintained on the Program website.
- B. The Participating Municipality Opt-In Notice shall require the following information in a format prescribed by the Authority:
1. The name of the municipality;
  2. The county in which the municipality is located;
  3. Contact information for the municipality, including, but not limited to, name, title, email, and phone number;
  4. Mailing address for the municipality;
  5. A copy of the approved municipality Opt-In Ordinance, which must be in the form attached as Appendix B ;
  6. A completed Garden State Program Agreement signed by the appropriate municipal officer, which must be in the form attached as Appendix C ; and
  7. If the designation as a Participating Municipality was previously revoked, explanation satisfactory to the Authority of the corrective measure(s) implemented that will prevent or ensure that the compliance failure does not happen again.
- C. Responsibilities of Municipalities under the Program. With respect to each C-PACE Project undertaken within its boundaries, the Participating Municipality shall:
1. Following the Authority’s determination that a C-PACE Project is eligible and simultaneous with the execution by the Eligible Owner and Qualified Capital Provider of the financing agreement:
    - a. Enter into a C-PACE Assessment Agreement with the Eligible Owner in which the Property Owner agrees to the imposition of a C-PACE Assessment on the Eligible Property benefited by a C-PACE Project and containing the related Repayment Schedule; and in which the Participating Municipality agrees to levy, bill, collect, remit, and, to the extent

- necessary, enforce the C-PACE Assessment (see Appendix D for the required form of this C-PACE Assessment Agreement);
- b. Enter into a C-PACE Assignment Agreement (“Assignment Agreement”) with the Qualified Capital Provider, or its designee, successor, or assign that is providing the Direct Financing for the C-PACE Project, in which the Participating Municipality assigns the C-PACE Assessment to the Qualified Capital Provider (see Appendix E for the required form of this Assignment Agreement).
2. File, or cause to file, the Notice of Assessment, together with the executed C-PACE Assessment Agreement and Assignment Agreement, with the county recording office in the county in which the Eligible Property is located (see Appendix F for the required form of this Notice of Assessment).
  3. Levy, bill, and collect the C-PACE Assessment and remit the C-PACE Assessment to the Qualified Capital Provider, as described in Section 4.03.
  4. As necessary, enforce the C-PACE Assessment, which is described in Section 4.06.
- D. Termination of Participation by the Municipality: A Participating Municipality may terminate its participation in the Program for any reason by providing ninety (90) days prior written notice to the Authority or in the case of a material change to the Program, by providing written notice to the Authority within sixty (60) days of the material change to the Program with such a termination being effective fifteen (15) days after the written notice; provided, however, that any termination shall not be effective with respect to any continuing obligations of the Participating Municipality relating to any C-PACE Assessments that have not been paid or otherwise discharged in full, and all such continuing obligations of the Participating Municipality relating to such C-PACE Assessments shall continue until all such C-PACE Assessments have been paid or otherwise discharged in full.

### **Section 3.02 Qualified Capital Providers**

A Capital Provider seeking to participate in the Program (“Qualified Capital Provider”) shall follow the process in Section 3.03 to be designated as a Qualified Capital Provider by the Authority. A list of Qualified Capital Providers is maintained on the Authority’s Garden State C-PACE website ([www.njeda.com/cpace](http://www.njeda.com/cpace)). The Authority’s designation of a Capital Provider as a Qualified Capital Provider does not constitute a finding by the Authority that a Qualified Capital Provider is appropriate for any particular C-PACE Project or an endorsement of any Qualified Capital Provider.

A. Capital Providers. “Capital Provider” means:

1. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 (17 C.F.R. 230.501 through 230.508) or Rule 144A (17 C.F.R. 230.144A) of the federal “Securities Act of 1933” (15 U.S.C. s.77a et seq.), as amended;
2. The trustee or custodian of a trust or custody arrangement which provides that each beneficial owner of interests shall be an accredited investor or qualified institutional buyer;
3. A special purpose securitization vehicle for the sale and transfer of securities, which is restricted to those persons described in subsections A.1 or A.2 of this definition; or

4. A commercial lending institution chartered by a state or the federal government, including, without limitation, a savings and loan association, a credit union, or a commercial bank.

Until the Authority issues supplemental Guidelines, a Capital Provider shall not include a public entity.

### **Section 3.03 Eligibility Criteria for Qualified Capital Providers**

- A. To be designated as a Qualified Capital Provider, a Capital Provider must meet the following eligibility requirements:
  1. Demonstrate that it meets the definition of a Capital Provider above;
  2. Not be in default with any agreement with the Authority;
  3. Be in substantial good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the Department of the Treasury or, if a compliance issue exists, have entered into a corrective action plan or other agreement with the respective department, as applicable:
    - a. Substantial good standing shall be determined by each department and mean, at a minimum, that the Capital Provider:
      - i. As to the Department of Labor and Workforce Development and Department of Environmental Protection:
        1. Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the Capital Provider; and
        2. Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and
      - ii. As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department; and
    - b. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgate or issue, their own more stringent rule or standard defining the term “substantial good standing,” the respective department shall use such rule or standard to determine whether an individual or entity is in substantial good standing.
4. Demonstrate one of the following:
  - a. Be an approved capital provider to participate in three (3) or more C-PACE programs, other than the Garden State C-PACE Program;
  - b. Has closed financing to three (3) or more C-PACE financing transactions in another C- PACE program(s);
  - c. Has originated, maintained, and serviced more than \$2.5 million of loans in the areas of energy efficiency, renewable energy, or building improvements over a period of at least three (3) years;
  - d. Has three (3) years or more of experience with second mortgages or senior and subordinate liens.

5. If the applicant's designation as a Qualified Capital Provider was previously revoked, explanation satisfactory to the Authority of the corrective measure(s) implemented to ensure that the compliance failure does not happen again; and
6. Satisfy the Authority's review pursuant to the Authority's debarment and disqualification rules at N.J.A.C. 19:30-2.

B. Qualification Process. A Capital Provider seeking to become a Qualified Capital Provider must submit a completed application to the Authority. Applications are accepted on a rolling basis and can be found on the Garden State C-PACE website. The application shall require the following information in a format prescribed by the Authority:

1. Name and address of the applicant;
2. Contact information for the applicant, including, but not limited to, name, title, email, and phone number;
3. Estimated amount of capital available to use for the Program;
4. List of staff available to manage C-PACE Project transactions, including, but not limited to, names and years with the applicant;
5. The principal regulator(s) of the Capital Provider (such as, the Federal Deposit Insurance Corporation, Federal Reserve Board, the Office of the Comptroller of the Currency, etc.). If not a regulated firm or financial institution, provide the names, titles, email addresses, and direct telephone numbers of three (3) professional references for the firm or, if recently formed, for the firm's principal partners;
6. A certification from the Capital Provider certifying that the Capital Provider is in good standing with their principal regulator.
7. One of the following:
  - a. A list of at least three (3) C-PACE programs for which the applicant has been qualified to participate as a capital provider, including the name of the key contact at the program administrator for each program, and a certification by the Capital Provider that the Capital Provider is not or has not been disqualified, removed, or otherwise deemed ineligible or unable to continue participating in any C-PACE program; or
  - b. Evidence satisfactory to the Authority demonstrating A.4.b, A.4.c., or A.4.d above.
8. Acknowledgement and consent by the applicant that the Authority will publicly disclose any information necessary for the reports required pursuant to N.J.S.A. 34:1B-376 and for the Authority to determine eligibility under the Program;
9. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2 et seq.; and
10. Any other necessary and relevant information as determined by the Authority to complete its review of an applicant.

C. As part of its review, the Authority may contact representatives of any of the C-PACE programs in which the Applicant has previously participated in or is currently participating.

D. The Authority shall notify the applicant of the Authority's decision. If approved, the Qualified Capital Provider and the Authority shall enter into a Private Lender Capital Provider Participation Agreement, in the form set forth in Appendix G. The Capital Provider shall be designated a Qualified Capital Provider upon execution of the Private Lender Capital Provider

Participation Agreement, which shall require, among other things, that the Qualified Capital Provider:

1. Ensure that all Program documentation is prepared and procedures are followed and that the C-PACE Project and the Direct Financing are eligible in accordance with these Program Guidelines;
  2. Collect and remit the Closing Fee due to the Authority from the Eligible Owner; and
  3. Provide annual reporting to the Authority, no later than March 31, on the performance in the prior year of any Direct Financing that the Qualified Capital Provider is providing, which shall address whether payments on the C-PACE Assessment have been made on a timely basis and if there have been any defaults, together with such other information that the Authority may require to determine the performance of the Program and to provide the reports required pursuant to N.J.S.A. 34:1B-376.
- E. The Qualified Capital Provider shall be required to satisfy the Program's eligibility requirements for the duration of its participation in the Program. The Authority may require, from time to time, that the Qualified Capital Provider submit information or documentation pertaining to its ongoing eligibility as a Qualified Capital Provider and may revoke such qualification if it no longer meets the Program's requirements or it is not otherwise in compliance with the C-PACE Act, the Program Guidelines, the Private Lender Capital Provider Participation Agreement. including, but not limited to, an updated legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2.

## **ARTICLE IV. GARDEN STATE C-PACE PROJECT PROCESS OVERVIEW**

An individual or entity (“Project Applicant”) seeking to be an Eligible Owner for a C-PACE Project shall submit a completed application (“Project Application”) to the Authority for a determination by the Authority that the proposed project is eligible.

### **Section 4.01 Application Process**

#### **A. Application Preparation and Submission**

The Project Application shall include the following information in an application format prescribed by the Authority:

1. Name, address, and phone number of Project Applicant;
2. If the Project Applicant is an entity:
  - a. Type of entity, country and state of formation, date of formation, federal and state tax identification number, and website address; and
  - b. Name, title, email, and phone number of the primary point of contact;
3. If applicable, name, title, email, phone number, and address of consultant and/or attorney assisting with Project Application;
4. Address of the proposed Eligible Property, type of property and, if applicable, lease agreement. If the Project Applicant proposes a property in a municipality that is not a Participating Municipality, the Project Application shall not be complete until the municipality is designated by the Authority as a Participating Municipality as set forth in Section 3.01;
5. Certification from the Project Applicant that the Project Applicant has the requisite authority from all other persons or entities with an interest in the proposed Eligible Property, or their duly authorized representative, for the imposition of the C-PACE Assessment on the Eligible Property;
6. Narrative description of the proposed C-PACE Project and all costs, including, but not limited to, Project Costs;
7. Project Applicant’s selected Qualified Capital Provider to provide the Direct Financing and a written certification to the Authority, in the form attached as Appendix H, certifying that the Qualified Capital Provider is an Independent Party from the Qualified Technical Reviewers, the proposed property is an Eligible Property, the Project Applicant is an Eligible Owner, and the proposed financing is a Direct Financing. If the Project Applicant proposes an entity that is not a Qualified Capital Provider, the Project Application shall not be complete until the entity is designated by the Authority as a Qualified Capital Provider as set forth in Section 3.03;
8. Certification from the Project Applicant that the Project Applicant has sufficient sources to complete the proposed C-PACE Project;
9. All required Technical Evaluations and the name of the individual(s) or entity(ies) that completed the Technical Evaluation(s), type of Technical Evaluation(s) completed, the description of experience and credentials of the individual(s) who completed the Technical Evaluation(s), and the WAUL calculated by the Technical Evaluator(s);

10. All required Technical Review Certification Letters completed by a Qualified Technical Reviewer documenting the relevant Technical Reviews as described in Section 5.03 and Appendix H. If the Project Applicant proposes an individual or entity that is not a Qualified Technical Reviewer, the Project Application shall not be complete until the individual or entity is designated by the Authority as a Qualified Technical Reviewer as set forth in Section 5.03;
11. A current title report and appraisal report;
12. A Mortgage Holder Consent from each current mortgage lien holder on the applicable Eligible Property, which shall also include the mortgage lien holder's certification that the mortgage loan is not currently in default, as provided in Appendix A; if such consent is not yet obtained, the Authority's determination of Project eligibility shall be conditioned upon receipt of such consent(s) and the Direct Financing shall not close until the Authority's satisfactory review of such consent(s). The Mortgage Holder Consent shall require that each mortgage lien holder consent to the amount of the C-PACE Assessment and a maximum increase to the amount by 20%;
13. Acknowledgement and consent by the Project Applicant that the Authority will publicly disclose the C-PACE Project, the Direct Financing, and any information necessary for the reports required pursuant to N.J.S.A. 34:1B-376;
14. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
15. A certification under penalty of perjury signed by the Eligible Owner if an individual or the individual with the authority to execute and bind the Eligible Owner if an entity that the signatory has reviewed the Project Application information and any associated documents submitted, that the representations contained therein are accurate, and that the Project Applicant is not in default regarding any of its obligations with respect to any Authority program; and
16. Any other necessary and relevant information as determined by the Authority for a specific Project Application, including, but not limited to, information needed to determine if a proposed project complies with the Program.

The Project Applicant shall be responsible for all costs incurred to prepare and submit the Project Application, including, but not limited to, the Technical Evaluation(s) and the Technical Review.

B. Application Review

The Authority will review the completed Project Application and associated documents to determine if eligibility requirements have been met based upon the version of these Program Guidelines (including all forms of documents included herein) in effect at the time that the Project Application is submitted. If necessary to determine the eligibility of a proposed C-PACE Project, the Authority may conduct or require the Project Applicant to submit additional technical analysis and verifications of any eligibility requirements.

C. Determination Letter

Once the Authority determines that the proposed C-PACE Project is eligible, the Authority will issue a Pre-Determination Letter to the Project Applicant with a copy to the selected Qualified Capital Provider. The Pre-Determination Letter shall state all conditions that the Eligible Owner or the Qualified Capital Provider must satisfy for the Authority to approve the

proposed C-PACE Project. The conditions shall include, but not be limited to, a meeting with the Authority regarding the prevailing wage obligations pursuant to Section 8.01. Once the conditions of approval are satisfied to the Authority's satisfaction, the Authority will issue a Determination Letter to the Project Applicant with a copy to the selected Qualified Capital Provider and the Participating Municipality, authorizing the Direct Financing provided it closes within 24 months from the date of the Determination Letter and further provided that the Eligible Owner maintains all eligibility requirements and the Qualified Capital Provider collects the Closing Fee due to the Authority. The Project Applicant shall sign and return the executed Determination Letter within the time requested by the Authority. The Authority may grant an extension of 6 months, in its sole discretion after which, absent extenuating circumstances, the Authority's determination of eligibility shall expire if the Project Applicant has not executed the Determination Letter. The Authority's determination of eligibility shall expire if the Direct Financing does not close within 24 months from the date of issuance of the Determination Letter, or 30 months if an extension has been granted, in the Authority's sole discretion.

#### **Section 4.02 Changes to C-PACE Projects**

The Project Applicant and the Qualified Capital Provider shall be responsible for ensuring that the C-PACE Project remains eligible to participate in the Garden State C-PACE Program pursuant to these Guidelines. If the C-PACE Project does not start construction within 60 days after the Authority's issuance of the Determination Letter, the Eligible Owner shall submit a certification within 60 days prior to commencement of construction signed by the Eligible Owner, the Qualified Capital Provider, and the Qualified Technical Reviewer stating that the C-PACE Project remains eligible as a C-PACE Project. No project change shall be allowed if the change results in an increase to the Direct Financing that exceeds 20% of the original amount; a new Project Application shall be required in that event. If the Authority finds that any project change resulted in the C-PACE Project no longer being eligible, the Authority shall notify the Eligible Owner, the Qualified Capital Provider and the Participating Municipality that the C-PACE Project no longer qualifies for a C-Pace Assessment.

#### **Section 4.03 Imposition, Assignment and Recording of C-PACE Assessment; Entry into Financing Agreement; Funding**

Following the Project Applicant's receipt of the Determination Letter:

- A. The Eligible Owner and the Participating Municipality shall enter into the C-PACE Assessment Agreement, under which the Eligible Owner agrees to the imposition of the C-PACE Assessment on the Eligible Property, the recording of the C-PACE Assessment in the county recording office, and the assignment by the Municipality of the C-PACE Assessment to the Qualified Capital Provider, and in which the Participating Municipality agrees to levy, bill, collect, and remit assessment payments to the Qualified Capital Provider and, if necessary, enforce the C-PACE Assessment;
- B. The Eligible Owner and the Qualified Capital Provider shall enter into the Direct Financing Agreement;
- C. The Participating Municipality and the Qualified Capital Provider shall enter into the C-PACE Assignment Agreement, under which the Participating Municipality assigns to the Qualified Capital Provider all of its right, title, and interest in and to the C-PACE Assessment and the C-



PACE Assessment Agreement, with the Participating Municipality retaining its obligation to levy, bill, collect, remit, and, if necessary, enforce the C-PACE Assessment;

- D. The Participating Municipality shall record, or cause to be recorded, the Notice of Assessment, together with the C-PACE Assessment Agreement and the Assignment Agreement, in the county recording office in the county in which the Eligible Property is located. At the request of the Qualified Capital Provider, recording may be effectuated by the Qualified Capital Provider. The documents must be submitted for filing no later than fifteen (15) business days following the execution of the documents. The C-PACE Assessment shall be a single, continuous first lien on the Eligible Property on and after the date of recording the C-PACE Assessment Agreement; and
- E. The Qualified Capital Provider shall provide to the Authority all fully executed and recorded documents referenced in this section within fifteen (15) days of receipt by the Qualified Capital Provider of the recorded documents.

#### **Section 4.04 Renewable Energy Certificates**

An Eligible Owner who installs a Renewable Energy System Improvement under the Garden State C-PACE Program or a Local C-PACE Program may also assign or transfer any Solar Renewable Energy Certificates, Transition Renewable Energy Certificates, or other renewable energy certificates or credits that accrue to the Property Owner from the operation of the system to the Authority, the municipality, the county improvement authority, other public entity, or the Private Entity, or the Qualified Capital Provider as applicable, which has financed the C-PACE Project. If any Solar Renewable Energy Certificates, Transition Renewable Energy Certificates, or other renewable energy certificates or credits are assigned or transferred to a municipality, county, county improvement authority, other public entity, or Private Entity, the municipality, county, county improvement authority, other public entity, or Private Entity, or Qualified Capital Provider is authorized to sell, grant, assign, convey, or otherwise dispose of its interest in the certificates or credits to repay the Direct Financing.

#### **Section 4.05 Reporting on C-PACE Project Milestones**

- A. C-PACE Portfolio Status Update Report: The Qualified Capital Provider shall provide the Authority with a C-PACE Portfolio Status Update Report at least once every year, submitted to the Authority in December of each year. The C-PACE Portfolio Status Update Report shall be a single report that includes information for each outstanding C-PACE Assessment. When the repayment of a Direct Financing is complete, the corresponding C-PACE Assessment may be removed from the C-PACE Portfolio Status Update Report. At a minimum, the C-PACE Portfolio Status Update Report shall include the following information:
  - 1. The number of outstanding C-PACE Assessments;
  - 2. If any assessments are no longer in good standing;
  - 3. If there have been any late payments;
  - 4. If there have been any delinquencies;
  - 5. The number of new C-PACE Assessments opened in the preceding year; and
  - 6. Anything else that the Authority requests that the Authority determines is needed for the reports required pursuant to N.J.S.A. 34:1B-376.

- B. Project Completion Certification. Upon completion of a C-PACE Project, the Qualified Capital Provider shall submit to the Authority a certification by the Eligible Owner that the Eligible Improvements have been installed and are in good working order. The Eligible Owner shall also certify that all prevailing wage requirements have been met. Upon the submission of the Project Completion Certificate, the Authority, or a representative third-party contracted by the Authority, may conduct site visits or inspections or request additional information or documentation, including, but not limited to, pictures or video, to ensure that the Eligible Improvements were installed as specified.

**Section 4.06 Participating Municipality’s Responsibility for Billing, Collection, Remittance and Enforcement of C-PACE Assessments**

- A. Payments of the C-PACE Assessment shall commence as set forth in the C-PACE Assessment Agreement. The Participating Municipality shall levy, bill and collect payments for the C-PACE Assessments in accordance with the Repayment Schedule attached to the C-PACE Assessment Agreement. The Repayment Schedule may be amended from time to time by agreement of the Qualified Capital Provider and the Eligible Owner and the filing of a Notice of Amendment of Assessment. Following its receipt of any such payments, the Participating Municipality shall remit such payment to the applicable Qualified Capital Provider within thirty (30) days following the receipt of the payment by the Participating Municipality.
- B. If any payment of a C-PACE Assessment is not made when that payment shall have become due, or later, consistent with any grace period provided or extended by a Participating Municipality for the payment of property tax bills as may be permitted or required by law, interest thereon shall be imposed at the same rate as may be imposed upon unpaid property taxes in the Participating Municipality. Notwithstanding any other provision of law, such statutory interest shall be in addition to any accrued interest and any amount fixed as a penalty for delinquency pursuant to the Direct Financing Agreement between the Eligible Owner and the Qualified Capital Provider.
- C. All such amounts shall be collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale if the Participating Municipality enforces collection of its unpaid property taxes through accelerated tax sales. The proceeds of the sale shall also pay the outstanding past unpaid amounts of the C-PACE Assessment. However, the remaining balance not delinquent on a C-PACE Assessment shall not be subject to acceleration or extinguishment in the event of a default in payment. Any statutory interest collected by the Participating Municipality on a delinquent C-PACE Assessment pursuant to this paragraph shall be retained by the Participating Municipality. Any accrued interest, or any amount fixed as a penalty for delinquency, pursuant to the Direct Financing Agreement between the Eligible Owner and the Qualified Capital Provider shall be remitted to the Qualified Capital Provider. If the Property Owner(s) is delinquent on a C-PACE Assessment as well as delinquent on taxes, charges, or other assessments, any payment shall be applied towards any and all such other delinquencies before being applied to any delinquent C-PACE Assessment.

- D. Notwithstanding any other provision of law, in the event that any lien on the Eligible Property shall be exposed to tax sale, pursuant to the “tax sale law,” N.J.S.A. 54:5-1 et seq., and is struck off and sold to the Participating Municipality, the C-PACE Assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate described in the C-PACE Assessment, paramount to all prior or subsequent alienations and descents of the real estate or encumbrances, except subsequent taxes, charges, or other assessments, and provided that, notwithstanding the obligations of a Participating Municipality pursuant to N.J.S.A. 54:5-53.1, while the Participating Municipality holds the lien or owns the Eligible Property, the Participating Municipality shall not be responsible for or required to make any payment from its treasury or any other source in furtherance of or to satisfy the C-PACE Assessment. A Participating Municipality shall not bear any other responsibility in furtherance or satisfaction of a C-PACE Assessment, except that a Qualified Capital Provider may seek action to compel the Participating Municipality to enforce a lien through an action to foreclose.
- E. Eminent Domain or Condemnation. In the event of a taking of the Eligible Property by eminent domain or condemnation, the C-PACE Assessment may be accelerated or extinguished, at the election of the Qualified Capital Provider, provided the Qualified Capital Provider is compensated in accordance with the provisions of the “Eminent Domain Act of 1971,” N.J.S.A. 20:3-1 et seq., by the governmental entity utilizing eminent domain or condemnation for the balance due on the unpaid C-PACE Assessment and any interest, penalties, or other charges related thereto.

## ARTICLE V. TECHNICAL EVALUATION AND REVIEW

### Section 5.01 Technical Evaluation

The Garden State C-PACE Supplemental Guidelines set forth the technical evaluation and review requirements for projects that are not Retrofit Projects.

“Technical Evaluation” means an evaluation of the proposed Eligible Improvements and the C-PACE Project to ensure that they satisfy Program eligibility requirements. Technical Evaluations, for Retrofit Projects, must consist of, at a minimum, B or C below:

- A. The Technical Evaluation shall be performed by a professional or entity (“Technical Evaluator”) who/which meets one of the following:
  1. Certified Energy Manager or Certified Energy Auditor;
  2. Professional Engineer with demonstrated relevant experience; or
  3. Contractor with relevant demonstrated experience
  
- B. Whole Building Model Approach. This approach applies only to C-PACE Projects that include any Energy Efficiency Improvement. Using this approach, the technical evaluation will determine whether a proposed C-PACE Project meets or exceeds the applicable State energy subcode by calculating the delta between the energy performance of two models. One model representing meeting the State energy subcode and local building code and a second model representing the as-designed proposed C-PACE Project. All relevant input and output data must accompany the model. If the applicable State energy subcode minimum is not met or exceeded, the proposed C-PACE Project is not eligible for Direct Financing funded with a C-PACE Assessment.
  
- C. Prescriptive Approach. This approach requires an itemized list of each improvement that the Qualified Capital Provider proposes to fund. For a C-PACE Project that includes any Energy Efficiency Improvement, if the applicable State energy subcode minimum is not met or exceeded, the proposed C-PACE Project is not eligible for Direct Financing funded with a C-PACE Assessment. The measures may be proven eligible through one or more of the following:
  1. U.S. Department of Energy COMcheck form;
  2. Equipment data sheet; or
  3. Other forms of documentation that detail the specifications of the Improvement(s).
  
- D. In addition to the documentation evidencing the approach described in B or C above, all Technical Evaluations for C-PACE Projects must include, at a minimum:
  1. The scope of work for the proposed C-PACE Project;
  1. Documentation demonstrating that the proposed C-PACE Project meets the definition of a C-PACE Project, and the proposed improvements meet the definition of an Eligible Improvement;
  2. Direct Costs and Indirect Costs of the proposed C-PACE Project, as described in Section 2.04;
  3. Identification of the Effective Useful Life (EUL) of each Eligible Improvement;

4. The appropriate evaluation(s) as determined in the table below. If multiple Eligible Improvements are associated with a single C-PACE Project, the respective Technical Evaluation (ASHRAE Level 1, ASHRAE Level 2, Feasibility Study, etc.) must be completed;
5. For Water Conservation Measures, projected water savings in in kilogallons;
6. For Energy Efficiency Improvements, projected kilowatt-hours (electricity) or therms (natural gas); and
7. For Renewable Energy Improvements, projected generation in kilowatt-hours.

**Section 5.02 Required Technical Evaluations**

*Table 1: Required Technical Evaluations for Eligible Improvement Categories*

Eligible Improvement Category	Required Technical Evaluations
Energy Efficiency ( <i>Prescriptive Approach</i> )	ASHRAE Level 1
Energy Efficiency ( <i>Whole Building Approach</i> )	ASHRAE Level 2
Renewable Energy/Energy Storage	Feasibility Study, which shall include the information listed in Section 5.02A below
EV Charging	Feasibility Study, which shall include the information listed in Section 5.02B below
Water Conservation	ASHRAE Level 1 or 2 energy audit (which can cover certain water conservation measures), as appropriate for the Eligible Improvement
Flood Resistant Construction, Hurricane Resistant Construction, and Stormwater Management Systems	The required information set forth in Section 5.02C below
Microgrid	A Feasibility Study, which shall include the information listed in Section 5.02A below

A. A Feasibility Study for Renewable Energy, Energy Storage Improvements, and Microgrids, as outlined in the table above, shall include at a minimum:

1. Baseline electricity consumption and cost data, including the most recent 12 months of electricity utility bills;
2. Identification and evaluation of Eligible Property suitability;
3. Identification of metering specifications (locations, number of meters, etc.);
4. Identification of the electricity and/or fuel rate structure;
5. Assessment of the expected system performance;
6. Comparison of the expected system performance against the baseline energy consumption of the Eligible Property;
7. Analysis of building energy savings, including assumed electricity/fuel rate escalations; and
8. Operational information for storage projects, including microgrids (as applicable):
  - Feasibility Study must describe the proposed system, including but not limited to total storage capacity and battery or storage type;
  - Feasibility Study must contain information about the proposed dispatch strategy for storage systems, including how the storage will be dispatched during times of peak electric grid load; and
  - Feasibility Study must estimate the annual number of full charge and discharge cycles for the energy storage system

B. A Feasibility Study for EV Charging Improvements, as outlined in the table above, shall include at a minimum:

1. Number of EV chargers;
2. Cutsheets;
3. Documentation of the types and sizes of EV chargers; and
4. One-line diagram

C. Technical Evaluation for a C-PACE Project that includes Resiliency Improvements, as outlined in the table above, shall include at a minimum:

1. A narrative description of the Eligible Improvement(s) that contains:
  - Identification and confirmation of hazard(s) related to the Eligible Property;
  - Identification and quantification of site-specific vulnerability (risk) associated with the hazard;
  - Identification of customized resilience improvement that mitigate the risk or provide adaptation strategies;
  - Identification of any requirements from local or State laws or resilient related building codes and plans; and
  - Expected useful life for each measure
2. Technical documentation to support any assumptions and calculations such as:
  - Engineering calculations and models;
  - Quote or affidavit from insurance provider demonstrating decrease in or avoidance of insurance costs; or

- Schematics demonstrating raising of building above 100-year floodplain, if applicable
3. Documentation supporting savings, which may be in the form of:
- Savings from reduced insurance premiums;
  - Savings from avoided incremental insurance expenses;
  - Savings calculated from avoidance of business interruption; or
  - Savings resulting from uninterrupted power.

### **Section 5.03 Technical Review Process**

- A. “Technical Review” means a review by one or more Qualified Technical Reviewers of the Technical Evaluation to ensure the C-PACE Project is eligible.
- B. “Qualified Technical Reviewer” means a person or entity that has been qualified by the Authority to perform a Technical Review. The Qualified Technical Reviewer must be an Independent Party from the Qualified Capital Provider, Eligible Owner, and the individual(s) that conducted the Technical Evaluation for the C-PACE Project. If more than one Qualified Technical Reviewer is engaged, all Qualified Technical Reviewers shall contribute to and sign one Technical Review.
- C. A list of Qualified Technical Reviewers is maintained on the Garden State C-PACE website. The Authority’s designation of an individual or entity as a Qualified Technical Reviewer does not constitute a finding by the Authority that the Qualified Technical Reviewer is appropriate for any particular C-PACE Project or an endorsement of any Qualified Technical Reviewer.
- D. To be designated as a Qualified Technical Reviewer, a person or entity must:
1. For Energy Efficiency Improvements, Renewable Energy, or Energy Storage Improvements (non-solar), be or employ a licensed Professional Engineer (PE) or accredited individual from the following list:
    - a. American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
      - i. Building Energy Assessment Professional (BEAP)
      - ii. Building Energy Modeling Professional (BEMP)
    - b. Association of Energy Engineers (AEE)
      - i. Certified Energy Manager (CEM)
      - ii. Certified Energy Auditor (CEA)
    - c. Building Performance Institute
      - i. Energy Auditor
    - d. Energy Management Association (EMA)
      - i. Energy Management Professional (EMP)
    - e. Investor Confidence Project
      - i. ICP Quality Assurance Assessor
  2. For either Renewable Energy Improvements or Energy Storage Improvements that are solar photovoltaics, be or employ an individual from the following list:
    - a. A Professional Engineer (PE)

- b. A professional with a North American Board of Certified Energy Practitioners (NABCEP) photovoltaic design specialist certification;
    - c. Licensed Electrical Engineer;
    - d. Building Energy Assessment Professional (BEAP);
    - e. Building Energy Modeling Professional (BEMP);
    - f. Certified Energy Manager (CEM);
    - g. Certified Energy Auditor (CEA); or
    - h. Energy Management Professional (EMP)
  - 3. For Resiliency Improvements, Water Conservation, Microgrid, or EV Charging Improvements on an existing building:
    - a. Professional Engineer (PE) with the requisite licensure and accreditations to evaluate the applicable Improvements; or
    - b. Appropriate code compliance person or entity
  - 4. Satisfy the Authority's review pursuant to the Authority's debarment and disqualification rules at N.J.A.C. 19:30-2.
- E. An individual or entity seeking to become a Qualified Technical Reviewer must submit a completed application to the Authority. Applications are accepted on a rolling basis and can be found on the Garden State C-PACE website. The Application shall require the following information in a format prescribed by the Authority:
  - 1. Name and address of the applicant;
  - 2. Contact information for the applicant, including, but not limited to, name, title, email, and phone number;
  - 3. Documentation confirming the licenses, certifications, and/or accreditations of all individual employees that will be directly involved in reviewing proposed C-PACE Projects;
  - 4. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2; and
  - 5. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to determine if the entity or individual has the relevant minimum licenses or qualifications and relevant work experience in the Eligible Improvement Category.
- F. The Authority will review the application to determine if the eligibility requirements are satisfied and may request further clarification. The Authority shall notify the applicant of the Authority's decision whether to designate the applicant as a Qualified Technical Reviewer.
- G. The Authority may require, on an annual basis, that the Qualified Technical Reviewer submit information or documentation pertaining to the qualification process and may revoke the Technical Reviewer's qualification if it no longer meets the Program's qualification requirements or is not in compliance with the C-PACE Act or the Program Guidelines, including, but not limited to, an updated legal questionnaire disclosing all relevant legal matters in accordance with the Authority's debarment and disqualification rules at N.J.A.C. 19:30-2.
- H. Technical Review Required Information



The Technical Review must include, at a minimum, the following:

1. Verification that:
  - a. The appropriate Technical Evaluations were performed by one or more individuals who satisfy the requirements in Section 5.01A above;
  - b. The proposed C-PACE project is an eligible C-PACE Project, and the proposed improvements are Eligible Improvements;
  - c. The design and engineering of the proposed C-PACE Project are technically feasible and reasonably intended to result in any claimed benefits associated with the proposed C-PACE Project; and
  - d. The proposed C-PACE Project and its Eligible Improvement(s) will be permanently affixed to the Eligible Property.
2. Calculation or confirmation of:
  - a. Weighted Average Useful Life (WAUL) of all Eligible Improvements, as set forth in Section 5.04;
  - b. Direct and Indirect Costs of the proposed C-PACE Project as described in Section 2.04.

I. Technical Review Certification Letter

The Qualified Technical Reviewer(s) shall complete a letter certifying to the information required for a Technical Review in the form provided in Appendix H, which shall also include a certification by the Qualified Technical Reviewer(s) that the Technical Reviewer continues to be eligible as a Qualified Technical Reviewer.

- J. From time to time, the Authority may conduct reviews of any Technical Review performed by any Qualified Technical Reviewer, pursuant to this Article V, to evaluate compliance with the Program Guidelines, including, but not limited to, the technical standards. The Authority may require that the Qualified Technical Reviewer provide evidence or documentation supporting any of its Technical Reviews.

**Section 5.04 Useful Life Calculation**

Weighted Average Useful Life (WAUL)

The WAUL of a C-PACE Project is calculated on a weighted average basis from the WAUL of each Eligible Improvement that are of the same type with the same estimated useful life (EUL) using the following process:

The WAUL is calculated by:

1. For Eligible Improvements that are of the same type with the same EUL (Similar Eligible Improvements), calculate the ratio (percentage) of the costs of such Similar Eligible Improvements to the total cost of all the Eligible Improvements.
2. Multiply that percentage by the EUL of those Similar Eligible Improvements.
3. Sum the result of all the calculations under #2 for each group of Similar Eligible Improvements. The resulting sum is the WAUL.

Below is an example for a C-PACE Project that consists of the following Eligible Improvements:

	<b>Cost</b>	<b>% Of Total</b>	<b>EUL (years)</b>	<b>EUL (years)</b>
Insulation	50,000	19%	20	3.70
Windows	20,000	7%	30	2.22
HVAC	200,000	74%	20	14.81
Total	270,000	100%	<b>WAUL=</b>	<b>20.74</b>

**Step 1**

$$\text{Insulation: } \frac{\$50,000}{\$270,000} = 19\%$$

$$\text{Windows: } \frac{\$20,000}{\$270,000} = 7\%$$

$$\text{HVAC: } \frac{\$200,000}{\$270,000} = 74\%$$

**Step 2**

$$\text{Insulation: } 19\% \times 20 \text{ years} = 3.70 \text{ years}$$

$$\text{Windows: } 7\% \times 30 \text{ years} = 2.22 \text{ years}$$

$$\text{HVAC: } 74\% \times 20 \text{ years} = 14.81 \text{ years}$$

**Step 3**

$$3.70 + 2.22 + 14.81 = \underline{20.74 \text{ years WAUL}}$$

## ARTICLE VI. FEES

Unless otherwise stated, all fees are one-time, non-refundable fees paid by the Eligible Owner to the Authority.

Fee	Payable to	Amount
<p><b>Initial Application Fee</b> The portion of the Application Fee due with a completed Garden State C-PACE application.</p>	the Authority	\$1,000
<p><b>Closing Fee</b> The portion of the Application Fee collected by the Qualified Capital Provider at the time of closing of the Direct Financing and remitted to the Authority within ten (10) calendar days.</p>	the Authority	1 percent (%) of Direct Financing principal amount, not to exceed \$75,000
<p><b>Technical Reviewer Fee</b> If the Eligible Owner elects to use a Technical Reviewer retained by the Authority for a Technical Review and the Authority agrees, the Eligible Owner shall pay the full amount of direct costs of the Technical Reviewer.</p>	the Authority	Direct costs of the Technical Reviewer
<p><b>Municipal Annual Fee</b> An annual municipal fee shall be paid by the Eligible Owner to the Participating Municipality and consist of the following components, as applicable, which shall be paid at the time that the Participating Municipality incurs administrative costs:</p>		
<p><b>1. Municipal Closing Fee</b> This portion of the annual municipal fee shall be paid at time of Direct Financing closing for the Participating Municipality's activities to prepare for the ongoing billing, collecting, and remitting of the C-PACE Assessment.</p>	Participating Municipality	Rate of Participating Municipality specified in its Program Agreement, not to exceed: -- in the case where the Participating Municipality records documents directly, \$750; --in the case where the Participating Municipality requires another party to record documents, \$500.

<p><b>2. Municipal Servicing Fee</b>  This portion of the annual municipal fee shall be paid every year for the billing, collection, and remittance services of a Participating Municipality.</p>	Participating Municipality	Rate of Participating Municipality specified in its Program Agreement, not to exceed \$500
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## **ARTICLE VII. LOCAL C-PACE PROGRAM**

A municipality which, as of the Launch Date of the Program, is in the top third of municipalities in the State in terms of population (rounded up), according to the most recent American Community Survey published by the United States Census Bureau (“Authorized Municipality”), may establish a Local C-PACE Program subject to approval by the Authority. A county may also establish a Local C-PACE Program pursuant to a local C-PACE program ordinance to facilitate the financing of C-PACE projects in Participating Municipalities located in that county. The Authority shall publish a list of Authorized Municipalities and counties with approved Local C-PACE Programs on the Authority’s Program website. Qualified Capital Providers may not originate or finance C-PACE Projects in municipalities or counties in which they are contracted by the municipalities or counties to administer the Local C-PACE program.

### **Section 7.01 Establishing a Local C-PACE Program**

The process for establishing a Local C-PACE Program is as follows:

- A. For an Authorized Municipality that is not a Participating Municipality, the Authorized Municipality shall follow the process to be designated a Participating Municipality as set forth in Section 3.01.
- B. Submission of an application to establish a Local C-PACE Program to the Authority which application shall include, but not be limited, to:
  1. Proposed Local C-PACE Program ordinance that authorizes the creation of the Local C-PACE Program, with an opinion of counsel that the Local C-PACE Program ordinance is consistent with the requirements in N.J.S.A. 34:1B-378(b) and -379;
  2. An acknowledgement that the Authorized Municipality or, in the case of a Local C-PACE Program established by a county, any Participating Municipality located in that county, shall use the Uniform Assessment Documents prepared by the Authority, as they may be amended from time to time; and
  3. Draft Local C-PACE Program Guidelines, exclusive of the uniform assessment document, with an opinion of counsel that the Local C-PACE Program Guidelines are consistent with these Program Guidelines.
- C. After receipt of a completed application, the Authority will review the application to confirm that it is in compliance with these Program Guidelines and the C-PACE Act and either approve or decline the application within 60 days after its receipt. If the Authority does not act within 60 days after receipt, the application shall be deemed approved.
- D. Upon the Authority’s approval of the application, the Authorized Municipality or county, may adopt the draft Local C-PACE Program Ordinance and issue the draft Local C-PACE Program Guidelines. Neither Authorized Municipalities nor counties are authorized to approve C-PACE Projects without the Authority’s approval of its Local C-PACE Program.

- E. If the Authority declines the application, it shall provide a detailed explanation to the Authorized Municipality or county as to the reasons for the declination and the changes necessary to bring the draft Local C-PACE Program Ordinance and Local C-PACE Program into compliance with the requirements of the C-PACE Act. The Authorized Municipality or county may submit a revised application addressing the reasons and making the change indicated by the Authority. The Authorized Municipality or county shall not adopt the proposed Local C- PACE Program Ordinance if the Authority declines its application.

**Section 7.02 Role and Use of Local C-PACE Programs**

Any county that establishes a Local C-PACE Program shall do so only for the benefit of Participating Municipalities located within that county, but the Participating Municipalities shall remain responsible for the process of levying, billing, collecting, remitting, and enforcing the C-PACE Assessment. In a county or Authorized Municipality that has established a Local C-PACE Program, any C-PACE Projects in that Authorized Municipality or, in the case of a county, in any Participating Municipality located in that county, may be financed pursuant to the Garden State C-PACE Program or the Local C-PACE Program. In a Participating Municipality that has not established or is located in a county that has not established, a Local C-PACE Program, any C-PACE Projects in that Participating Municipality may be financed pursuant to the Garden State C-PACE Program only.

## **ARTICLE VIII. PREVAILING WAGE**

- A. The Eligible Owner shall comply with the Authority's prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 for any construction contract, as defined in N.J.A.C. 19:30-4.1, in relation to the C-PACE Project. In accordance with N.J.S.A. 34:1B-5.1, nothing in these Program Guidelines shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the first payment or other provision of the Direct Financing is received.
  
- B. The Qualified Capital Provider shall require in its Direct Financing Agreement that the Eligible Owner comply with the Authority's prevailing wage as set forth in A. above and shall include as an Event of Default the violation of the Eligible Owner of the prevailing wage requirement.

## ARTICLE IX. APPEALS

- A. For those declinations that require a decision by the Board of the Authority, the Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued. For those actions that do not require a Board decision, the Authority's action shall be effective on the date specified in the notice of the decision.
- B. An applicant may appeal the Authority's decision by submitting in writing to the Authority, within 20-calendar days from the effective date of either the Board's or the Authority's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- C. Appeals that are timely submitted shall be handled by the Authority as follows:
  1. The Chief Executive Officer of the Authority shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board (unless otherwise determined by the Board). The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. If the report is made to the Board, after reviewing the report, the Chief Executive Officer may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  3. The Board (or Authority officer if otherwise determined by the Board) shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board (or Authority officer if otherwise determined by the Board) shall issue a final decision on the appeal. Appeals of the final decision can be appealed to the New Jersey Appellate Division.



## **ARTICLE IX. FAILURE TO COMPLY WITH PROGRAM REQUIREMENTS**

- A. If a Qualified Capital Provider or Qualified Technical Reviewer fails to comply with a requirement of the Garden State C-PACE Program, including, but not limited to, requirements in these Program Guidelines or, if applicable, the Capital Provider Participation Agreement, the Authority may revoke the designation as a Qualified Capital Provider or a Qualified Technical Reviewer, respectively, which shall be in addition to any remedy any other individual or entity may have.
  
- B. If, at any time, the Authority determines that a Qualified Capital Provider or a Qualified Technical Reviewer made a material misrepresentation on its application or any submission to the Authority, the Authority shall revoke the designation as a Qualified Capital Provider or a Qualified Technical Reviewer, respectively, and the Qualified Capital Provider or Qualified Technical Reviewer shall not be eligible to be designated as a Qualified Capital Provider or Qualified Technical Reviewer, respectively, for up to one year, which shall be in addition to any other remedies in the Capital Provider Participation Agreement, if applicable, any remedy any other individual or entity may have, and any criminal or civil penalties to which the Qualified Capital Provider or Qualified Technical Reviewer may be subject.
  
- C. If a Participating Municipality fails to comply with a requirement of the Garden State C-PACE Program, including, but not limited to, requirements in these Program Guidelines or in the corresponding Participation Agreement, the Authority may revoke the designation as a Participating Municipality, which shall be in addition to any remedy any other individual or entity may have.
  
- D. If, at any time, the Authority determines that an Eligible Owner, or the officer(s), owner(s), or member(s) of the Eligible Owner that signed the Project Application certification and/or made the statement (“Responsible Officer”), made a material misrepresentation on its application or any submission to the Authority, the Eligible Owner, and all entities that the Responsible Officer controls or in which the Responsible Officer is a majority owner, shall not be eligible for a C-PACE Project for up to one year, which shall be in addition to any remedy any other individual or entity may have, and any criminal or civil penalties to which the Eligible Owner or Responsible Officer may be subject.
  
- E. If, at any time, the Authority determines that an individual or entity who performed a Technical Evaluation made a material misrepresentation on a Technical Evaluation or any submission to the Authority, the individual or entity shall not be eligible to be perform a Technical Evaluation for a proposed C-PACE Project for up to one year, which shall be in addition to any remedy any other individual or entity may have, and any criminal or civil penalties to which the individual or entity may be subject.

## **ARTICLE X. SEVERABILITY**

If any provision of these Program Guidelines is determined to be unlawful, void, or for any reason unenforceable, removal or invalidity of that provision shall be deemed severable from these Program Guidelines and shall not affect the validity and enforceability of any remaining provisions.

## **ARTICLE XI. GLOSSARY**

“Application Fee” shall have the meaning ascribed to it in Article VI.

“ASHRAE” means the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

“Assessment Agreement” shall have the meaning ascribed to it in Section 3.01C.

“Assignment Agreement” shall have the meaning ascribed to it in Section 3.01C.

“Authority” means the New Jersey Economic Development Authority.

“Authorized Municipality” shall have the meaning ascribed to it in Article VII.

“Beneficial Owner” shall have the meaning ascribed to it in Section 3.02A.

“Capital Provider” shall have the meaning ascribed to it in Section 3.02A.

“Capital Provider Participation Agreement” shall have the meaning ascribed to it in Section 3.03E.

“Closing Fee” shall have the meaning ascribed to it in Article VI.

“C-PACE” means commercial property assessed clean energy.

“C-PACE Act” shall have the meaning ascribed in Section 1.01.

“C-PACE Assessment Agreement” shall have the meaning ascribed in Section 3.01C.

“C-PACE Assessment” shall mean a local improvement assessment in accordance with N.J.S.A. 40:56-1 et seq. imposed by a Participating Municipality on an Eligible Property at the request of and with the consent of the Property Owner, and determined based upon the existing use of such Eligible Property or the contemplated use of unimproved Eligible Property upon completion of new construction, as a means of securing and otherwise facilitating financing provided by a Capital Provider with respect to a C-PACE Project at the Eligible Property, payments in respect of which C-PACE Assessment are collected by the municipality and remitted to or on behalf of the Capital Provider, its designee, successor, assigns or beneficiaries.

“C-PACE Project” shall have the meaning ascribed to it in Section 2.03.

“C-PACE Portfolio Status Report” shall have the meaning ascribed to it in Section 4.04A.

“Determination Letter” shall have the meaning ascribed to it in Section 4.01C.

“Direct Costs” shall have the meaning ascribed to it in Section 2.04A.

“Direct Financing” shall have the meaning ascribed to it in Section 2.05.

“Direct Financing Agreement” shall mean an agreement entered into between a Qualified Capital Provider and an Eligible Owner regarding the Direct Financing provided by the Qualified Capital Provider.

“Effective Useful Life” shall have the meaning ascribed to it in Section 5.02D.

“Electric Vehicle Charging Infrastructure” shall have the meaning ascribed to it in Section 2.03E.

“Eligible Improvements” shall have the meaning ascribed to it in Section 2.03.

“Eligible Improvement Category” shall have the meaning ascribed to it in Section 2.03.

“Eligible Owner” shall have the meaning ascribed to it in Section 2.02.

“Eligible Property” shall have the meaning ascribed to it in Section 2.01.

“Energy Efficiency Improvements” shall have the meaning ascribed to it in Section 2.03A.

“Energy Storage” shall have the meaning ascribed to it in Section 2.03D.

“Feasibility Study” shall have the meaning ascribed to it in Section 5.02A.

“Finance” or “Financing” means the investing of capital in accordance with these Program Guidelines and N.J.S.A. 34:1B-382, including, on the basis of supplemental program guidelines to be published by the Authority, the refinancing of an investment in an existing C-PACE Project.

“Financing Costs of Capital Providers” shall have the meaning ascribed to it in Section 2.04C.

“Flood Resistant Construction Improvements” shall have the meaning ascribed to it in Section 2.03G.

“Garden State C-PACE Program” or “Program” means the program established by the Authority pursuant to the C-PACE Act and subject to these Program Guidelines.

“Garden State Program Agreement” shall mean an agreement between the Authority and a Participating Municipality defining:

- The obligation of a municipality to participate in the Garden State C-PACE Program, including the requirement that the Participating Municipality levy, bill, collect, remit, and enforce a C-PACE Assessment; and
- The obligations, if any, that the Authority may undertake:
  - With respect to the remittance of C-PACE Assessments to Qualified Capital Providers if the remittance is authorized by regulations adopted by the Local Finance Board and requested by the Participating Municipality, and incorporated, at the Authority’s sole discretion, into the Authority’s program guidelines and processes; and
  - To review and qualify the participation of individual capital providers as or financings in the Garden State C-PACE Program.

“Hurricane Resistant Construction Improvements” shall have the meaning ascribed to in Section 2.03H.

“Independent Party” means that the party that is independent:

1. Has no overlap in its respective ownership or other beneficial interests with the parties from which it is independent;
2. Is not under common control, whether by virtue of ownership interest, contract arrangements, or otherwise with the parties from which it is independent; and
3. Has no employee participating in the Eligible Project, including, but not limited to, directly involved in the Technical Review of the Eligible Project, that has been employed by the parties from which it is independent during the preceding 12 months.

“Indirect Costs” shall have the meaning ascribed to it in Section 2.04B.

“Initial Application Fee” shall have the meaning ascribed to it in Article VI.

“Launch Date” means [INSERT DATE].

“Local C-PACE Program” means a program established by an Authorized Municipality or a county pursuant to N.J.S.A. 34:1B-379.

“Local C-PACE Program Application Fee” shall have the meaning ascribed to it in Article VI.

“Local C-PACE Program Guidelines” shall have the meaning ascribed to it in Article VII.

“Local C-PACE Program Ordinance” means an ordinance adopted by an Authorized Municipality or a county, and approved by the Authority pursuant to N.J.S.A. 34:1B-380, to establish a Local C-PACE Program within its jurisdiction pursuant to N.J.S.A. 34:1B-378(b) and N.J.S.A. 34:1B-379(a).

“Microgrid” means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the electric distribution system and that connects and disconnects from the electric distribution system to enable it to operate when both connected to, or independent of, the electric distribution system.

“Mortgage Holder Consent Form” is located at Appendix A.

“Municipal Closing Fee” shall have the meaning ascribed to it in Article VI.

“Municipal Servicing Fee” shall have the meaning ascribed to it in Article VI.

“NJBPU” means the New Jersey Board of Public Utilities.

“Notice of Assessment” means the document filed with the county recording officer in the county in which an Eligible Property is located, which notifies prospective holders of an interest in the Eligible Property that a C-PACE Assessment lien has been placed on the Eligible Property.

“Notice of Amendment of Assessment” means the document filed with the county recording officer in the county in which an Eligible Property is located, which notifies prospective holders of an interest in the Eligible Property that the previously recorded Notice of Assessment has been amended.

“Ongoing Measurement and Verification” shall have the meaning ascribed to it in Section 4.05C.

“Opt-In Ordinance” means an ordinance adopted by a municipality by which it authorizes its participation in the Garden State C-PACE Program and authorizes the municipality to enter into a Garden State Program Agreement with the Authority.

“Participating Municipality” means:

- a. a municipality that adopts an Opt-In Ordinance and executes a Garden State Program Agreement; or
- b. an Authorized Municipality that adopts an Opt-In Ordinance, executes a Garden State Program Agreement, and adopts a Local C-PACE Program Ordinance and Local C-PACE Program Guidelines approved by the Authority.

“Prescriptive Approach” shall have the meaning ascribed to it in Section 5.01C.

“Private entity” means a corporation, limited liability company, partnership, trust, or any other form of private organization, including but not limited to a “related competitive business segment of a public utility holding company,” or a “related competitive business segment of an electric public utility or gas public utility,” as those terms are defined in N.J.S.A. 48:3-51, so long as the organization is not subject to the jurisdiction of the Board of Public Utilities.

“Private Lender Capital Provider Participation Agreement” shall have the meaning ascribed to it in Section 3.03D.

“Program Fees” shall have the meaning ascribed to it in Section 2.04D.

“Program Guidelines” shall mean these guidelines, as they may be revised or amended from time to time, and which shall include all program-related documents prepared and published by the Authority as exhibits to the Program Guidelines.

“Project Applicant” shall have the meaning ascribed to it in Article IV.

“Project Application” shall have the meaning ascribed to it in Article IV.

“Project Completion Certification” shall have the meaning ascribed to in Section 4.04B.

“Project Costs” shall have the meaning ascribed to it in Section 2.04.

“Property” shall have the meaning ascribed to it in Section 2.01.

“Property Owner” shall have the meaning ascribed to it in Section 2.02.

“Qualified Capital Provider” shall have the meaning ascribed to it in Section 3.02.

“Qualified Energy Auditor” means a qualified energy auditor as defined by American Society of Heating, Refrigerating and Air-Conditioning Engineers® (ASHRAE) Standard 211 (series).

“Qualified Technical Reviewer” shall have the meaning ascribed to it in Section 5.03.

“Renewable Energy System Improvements” shall have the meaning ascribed to it Section 2.03C.

“Repayment Schedule” shall have the meaning ascribed to it in Section 2.05.

“Resiliency Improvements” means Stormwater Management System, Flood Resistant Construction, and Hurricane Resistant Construction Improvements.

“Responsible Officer” shall have the meaning ascribed to it in Section IXD.

“Retrofit Project” shall have the meaning ascribed to it in Section 2.03.

“Stormwater Management Systems” shall have the meaning ascribed to it in Section 2.03F.

“Solar Renewable Energy Certificate” means the same as defined in N.J.S.A. 48:3-51.

“Technical Evaluation” shall have the meaning ascribed to it in Section 5.01.

“Technical Review” shall have the meaning ascribed to it in Section 5.0

“Technical Review Certification Letter” shall have the meaning ascribed to it in Section 5.03.

“Transition Renewable Energy Certificate” means a certificate issued by the Board of Public Utilities or its designee, under the solar energy transition incentive program, which is designed to transition between the Solar Renewable Energy Certificate program and a solar successor incentive program to be developed by the Board of Public Utilities pursuant to N.J.S.A. 48:3-87.8 et al.

“Uniform Assessment Documents” means an Assessment Agreement, Assignment Agreement, Notice of Assessment, Notice of Amendment of Assessment, a Mortgage Holder Consent, and any other uniform or model documents prepared by the Authority and used in the Garden State C-PACE Program and Local C-PACE Programs, except that the Authority shall not mandate a uniform financing agreement, which shall be supplied by the Qualified Capital Provider for Direct Financing.

“Whole Building Model Approach” shall have the meaning ascribed to it in Section 5.01B

“Water Conservation Improvements” shall have the meaning ascribed to it in Section 2.03B.

“Weighted Average Useful Life (WAUL)” shall have the meaning ascribed to it in Section 5.04.

## **ARTICLE XII. LIST OF APPENDICES**

Appendix A: Form of Mortgage Holder Consent

Appendix B: Model Opt-In Ordinance

Appendix C: Form of Garden State Program Agreement

Appendix D: Form of C-PACE Assessment Agreement

Appendix E: Form of C-PACE Assignment Agreement

Appendix F: Form of C-PACE Notice of Assessment

Appendix G: Form of Private Lender Capital Provider Participation Agreement

Appendix H: Qualified Capital Provider/Technical Reviewer Certification Letter

Appendix I: Form of C-PACE Notice of Amendment of Assessment

Appendix J: Form of Eligible Owner Applicant Undertaking



**APPENDIX A – FORM OF MORTGAGE HOLDER CONSENT**

***Separate Document***

**APPENDIX B – MODEL OPT-IN ORDINANCE**

***Separate Document***

**APPENDIX C – FORM OF GARDEN STATE PROGRAM AGREEMENT**

***Separate Document***

**APPENDIX D – FORM OF C-PACE ASSESSMENT AGREEMENT**

***Separate Document***

**APPENDIX E – FORM OF C-PACE ASSIGNMENT AGREEMENT**

***Separate Document***

**APPENDIX F – FORM OF C-PACE NOTICE OF ASSESSMENT**

***Separate Document***

**APPENDIX G – FORM OF PRIVATE LENDER CAPITAL PROVIDER  
PARTICIPATION AGREEMENT**

***Separate Document***

**APPENDIX H – QUALIFIED CAPITAL PROVIDER/TECHNICAL  
REVIEWER CERTIFICATION LETTER**

***Separate Document***



**APPENDIX I – FORM OF C-PACE NOTICE OF AMENDMENT OF  
ASSESSMENT**

***Separate Document***

**APPENDIX J – FORM OF ELIGIBLE OWNER APPLICANT UNDERTAKING**

***Separate Document***