



Loudoun County, Virginia

REQUEST FOR PROPOSAL

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM ADMINISTRATOR

ACCEPTANCE DATE: Prior to 4:00 p.m., April 22, 2019 "Atomic" Time

RFP NUMBER: RFQ 74773

ACCEPTANCE
PLACE: Department of Finance and Procurement
Division of Procurement
One Harrison Street, SE, 4th Floor
Leesburg, Virginia 20175

PLEASE NOTE: A Pre-Proposal Conference will be held on April 4, 2019 at 10:00 a.m. in the Lovettsville Room, One Harrison Street, 1st Floor, Leesburg, Virginia 20175 for clarification of any questions on the specifications.

Requests for information related to this Proposal should be directed to:

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Purchasing Agent
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This document can be downloaded from our web site:
www.loudoun.gov/procurement

Issue Date: March 21, 2019

IF YOU NEED ANY REASONABLE ACCOMMODATION FOR ANY TYPE OF DISABILITY IN
ORDER TO PARTICIPATE IN THIS PROCUREMENT, PLEASE CONTACT THIS DIVISION AS
SOON AS POSSIBLE .

REQUEST FOR PROPOSAL

**COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY
PROGRAM ADMINISTRATOR**

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ATTACHMENT:

1. Codified Ordinance

Prepared By: s/Cheryl L. Middleton, CPPB Date: 3/21/19
Purchasing Agent

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM ADMINISTRATOR

1.0 PURPOSE

The purpose of this Request for Proposal (RFP) is for the County of Loudoun, Virginia (County) to obtain a Commercial Property Assessed Clean Energy (C-PACE) Program Administrator (PA) to design, promote, and administer the County's C-PACE Program as provided in this RFP.

2.0 COMPETITION INTENDED

It is the County's intent that this RFP permits competition. It shall be the offeror's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Purchasing Agent not later than fifteen (15) days prior to the date set for acceptance of proposals.

3.0 BACKGROUND INFORMATION

The County has adopted an ordinance establishing a C-PACE Program to facilitate the financing of renewable energy and distribution facilities; energy usage efficiency systems; and water usage efficiency improvements for non-residential properties located in the County. A copy of the ordinance is included in this RFP as Attachment 1. The C-PACE Program will allow private lenders (capital providers) to originate, service, and collect the payments for their C-PACE loans. If, for whatever reason, capital provider participation in the Program is discouraged by this loan servicing model, the County may require the successful offeror (also identified as PA herein) or its qualified subcontractor to service the loans with payments being remitted to the County. The C-PACE loans will be secured by a voluntary special assessment lien recorded against the improved property that may be enforced by the capital provider or the County in the event of a default.

The PA will design, promote, and administer, the County's C-PACE Program in a manner that: (i) provides a user-friendly application and administration process; (ii) effectively promotes and markets the Program and encourages Program participation; (iii) provides exemplary customer service to the County, borrowers, and capital providers; and (iv) provides a cost-effective fee structure to borrowers to offset all Program overhead costs. In addition, the PA may offer cost-effective a la carte related services that borrowers may utilize, such as energy auditing services, appraisals, referrals, etc., designed to facilitate the loan approval process and the implementation of eligible improvements. However, the PA may not require borrowers or capital providers to purchase these services from the PA as a condition for participation in the Program.

The PA will engage local businesses and non-profit groups, data centers, energy contractors, and potential financiers of eligible projects as part of its marketing efforts. The PA will provide all administrative, marketing, operational, and management services necessary to run a robust Program. The PA must be willing to work with a variety of capital providers, including, but not limited to, reaching out to local banks for inclusion in the Program. The PA shall be responsible for ensuring that all capital providers and contractors are appropriately licensed and qualified to participate in the Program.

The Program must be designed to set forth clear eligibility criteria for participants. For instance, property owners and their proposed projects should meet specific eligibility criteria such as an appropriate energy or water conservation audit for the proposed project. Capital providers and contractors must be appropriately licensed, insured, qualified, and authorized to transact business in the Commonwealth of Virginia.

4.0 OFFEROR'S MINIMUM QUALIFICATIONS

Offerors must demonstrate that they have the resources and capability to provide the materials and services as described herein. All offerors shall submit documentation with their proposal indicating compliance with the minimum qualifications. Failure to include any of the required documentation may be cause for the proposal to be deemed non-responsive/non-responsible and rejected.

The following are the minimum qualifications that must be met in order to be eligible for this contract:

- 4.1 Offerors shall show proof of sufficient financial resources to design, promote, and administer the C-PACE Program successfully without County funding. The offeror must provide audited financial statements for two (2) years, if available. In the event the offeror does not have audited financial statements, other information such as copies of tax returns may be required. All entities must be registered or have a registration application pending with the Virginia State Corporation Commission, unless exempt, and be legally authorized to transact business in the Commonwealth (see Section 6.28 below).
- 4.2 Offerors shall demonstrate experience in C-PACE program design, marketing, and program administration consisting of at least one (1) successful engagement in the last five (5) years for a term of at least two (2) years with a state or local government and closing at least one (1) C-PACE (commercial) loan. Experience may be with governmental entities outside of the Commonwealth of Virginia. If the offeror is a new entity, it must provide proof that its key personnel have the requisite experience and sufficient equity is available to fund a minimum of three months of operations.

- 4.3 Offerors must demonstrate positive relationships with C-PACE capital providers, contractors, other industry participants and respective state and local government representatives and provide references from at least one (1) capital provider and one (1) contractor and (1) state and/or local government representative, including the name of the person to contact, address, and telephone number, brief summary of the transaction (type of improvement and dollar amount). This list of references shall include company, and government name, person to contact, address, telephone number, e-mail address, the nature of the work performed, and the duration of the engagement. Failure to include references shall be cause for rejection of proposal as non-responsible. Offeror hereby releases listed references from all claims and liability for damages that result from the information provided by the reference. If the offeror is a new entity, it must provide proof that its key personnel have the requisite references.

5.0 SCOPE OF SERVICES

All proposals must be made on the basis of and specifically address whether the offeror is capable of providing the services set forth in this Section 5.0. The County reserves the right to consider an offeror's proposed changes to the Scope of Services as set forth in Section 9.11.

5.1 Program Design

The County desires a C-PACE Program that encourages and facilitates the installation of renewable energy and water efficiency improvements and is designed in a manner that is flexible and responsive to the needs of borrowers and capital providers. The PA must design a flexible C-PACE Program with an "open-market" structure accessible by all qualified capital providers, eligible property owners, and contractors. The program must include a Program Guide that at minimum: (i) meets the requirements of the C-PACE ordinance; (ii) clearly explains the Program and how it works; (iii) clearly sets forth eligibility requirements for participation by capital providers, property owners, and contractors; (iv) provides a C-PACE loan process from application to closing that is flexible, user-friendly, and streamlined; (v) defines eligible C-PACE improvements for both existing buildings and new construction; and (vi) provides quality assurance audit requirements to ensure that the C-PACE loans comply with the requirements of the C-PACE Program ordinance.

5.2 Program Promotion

5.2.1 Education and Outreach – The PA shall develop a modest cost efficient marketing plan that may include, but not be limited to: education and marketing tools for C-PACE Program promotion; possible media involvement; and engagement with capital providers, contractors, industry, economic development, and property owner groups to promote Program funding and opportunities for the

implementation of local projects. Program outreach should include County businesses, data centers, non-profit centers, and other community-based facilities. The County desires a marketing plan and an implementation of the Program that does not unreasonably drive up administrative costs and Program fees.

- 5.2.2 Program Website – The PA shall work with the County’s Office of the County Administrator, Public Affairs and Communications Division and the Department of Information Technology to implement a C-PACE Program webpage, which will include a “landing” page, on the County’s current website, and links to an external Program website for Program information, application submission, processing status, and loan information, along with capital provider and contractor information, including registration tools for capital providers and contractors. This webpage, website and/or linkages to external website(s) will be outside of the County’s network and all data collected through the C-PACE program links will managed, maintained and secured by the external program site administrator.
- 5.2.3 Customer Service – The PA shall provide sufficient personnel during County business hours (Monday – Friday 8:30 AM to 5:00 PM EST or EDST) to respond to telephone or email requests for Program information, preferably on the same day the request is received; to assist with and acknowledge the receipt of applications; to provide information concerning Program approval status; and to provide ongoing support.

5.3 Program Administration

- 5.3.1 Program Kick-Off and Implementation Plan– The PA shall develop a Program kick-off and implementation plan that ensures that the C-PACE Program is available to the public as soon as possible following contract award.
- 5.3.2 Application Processing – The PA shall be responsible for developing a procedure for the approval of applications; retaining records of each application; confirming the eligibility requirements; providing the initial review of C-PACE loan documents prepared by the capital provider; coordinating the completion, review, and execution of the C-PACE Program Agreement; and acting as a liaison between the County’s Program Manager and the capital provider. Individual property and project underwriting is expected to be a function of the capital provider for each C-PACE project. Following execution of the loan documents, the PA shall provide to the County a copy of the complete loan document package, either electronically or in hard copy form.
- 5.3.3 Monitor and Coordinate Program Administration – The PA shall

monitor and coordinate all components of the C-PACE Program related to the development and ongoing management of the C-PACE Program administration.

- 5.3.4 Data Management – The PA shall maintain a database of all C-PACE Program financings, terms, capital providers, and status. This database must be capable of tracking by property, property owner, capital provider, eligible improvement, or amount financed, and provide reporting capabilities. The PA must perform periodic/regular backup of all data related to the C-PACE Program that can be recovered and inspected at the request of the County at any point in time as needed. The PA shall provide periodic reports to the County as needed. The reports may include, but not be limited to the following information: property, property owner, capital provider, amount financed (with dates), program fees, eligible improvement costs, and estimated energy efficiency and/or water conservation savings associated with the eligible improvement. Further, the PA may be exposed to confidential information and the disclosure of such information could violate rights of private individual and entities. A brief discussion of such capacity to maintain privacy and protocols to protect confidential information should be included in the proposal.
- 5.3.5 Quality Assurance – The C-PACE Program must include an auditing process that ensures all capital providers, borrowers, improvements, and C-PACE loans meet or exceed the requirements set forth in the Program Guide, and that verifies that the improvements financed through the Program were actually installed.
- 5.3.6 C-PACE Loan Servicing – The County's preference is to have the capital provider bill and collect C-PACE loan payments (service the loan) from the borrower. However, the County's ordinance leaves open the possibility that the PA may bill the C-PACE loans with the payments being remitted by the borrower to the County.
- 5.3.7 Optional Services Offered by PA–The PA may offer optional a la carte services, such as appraisals and energy audits, on a fee for service basis.
- 5.3.8 Continuity of Service – In the event of PA termination or end of the contract term, the PA must provide to the County, or to a successor PA, the data related to the County's C-PACE Program and other proprietary information reasonably requested by the County in order to provide for the orderly transition from one PA to another. The obligation of the PA to provide the termination services will survive the termination or expiration of the agreement for whatever reason. Termination services must include developing a plan for the orderly transition to the County or successor PA of the extracted C-PACE Program data in a format and timeframe mutually agreed upon by

the parties.

5.3.9 Reporting – The PA must identify relevant C-PACE Program information for reporting and marketing purposes and provide reporting of C-PACE Program data and participation results as requested by the County's Board of Supervisors or Program Manager. This requirement may include the attendance of a representative of the PA at meetings of the Board of Supervisors to present the information and answer questions concerning the Program. Additionally, the PA must be available to meet on an as needed basis, but at least quarterly with County staff, either in person or remotely, as well as be available for routine correspondence.

5.3.10 Program Fee(s) – The County will not compensate the PA for any of the services set forth herein. The PA must identify its proposed Program Fee(s) which may be assessed as (i) a program application fee paid by the property owner requesting to participate in the Program; (ii) a component of the interest rate on the loan; or (iii) a combination of (i) and (ii). The County may also assess a fee in the event it incurs costs associated with the Program.

6.0 TERMS AND CONDITIONS

The Contract with the successful offeror will contain the following Terms and Conditions. Offerors taking exception to these terms and conditions or intending to propose additional or alternative language must (a) identify with specificity the County Terms and Conditions to which they take exception or seek to amend or replace; and (b) include any additional or different language with their proposal. Failure to both identify with specificity those terms and conditions offeror takes exception to or seeks to amend or replace as well as to provide offeror's additional or alternate Contract terms may result in rejection of the proposal. **While the County may accept additional or different language if so provided with the proposal, the Terms and Conditions marked with an asterisk (*) are mandatory and non-negotiable.**

6.1 Procedures

The extent and character of the services to be performed by the Contractor shall be subject to the general control and approval of the Director of General Services or his/her authorized representative(s). The Contractor shall not comply with requests and/or orders issued by anyone other than the Director of General Services or his/her authorized representative(s) acting within their authority for the County. Any change to the Contract must be approved in writing by the Division of Procurement and the Contractor.

6.2 Term

The Contract shall cover the period from July 1, 2019 through June 30, 2024, or an equivalent period depending upon date of Contract award.

This Contract may be renewed at the expiration of the initial term at the request of the County. The renewal may be for up to five (5) additional one (1) year periods. Unless otherwise agreed to by the parties or as may be required by law, any renewal shall be based on the same prices, terms and conditions as the initial term.

6.3 Delays and Delivery Failures

Time is of the essence. The Contractor must keep the County advised at all times of status of parties' agreement. If delay is foreseen, the Contractor shall give immediate written notice to the Division of Procurement. Should the Contractor fail to deliver the proper item(s)/service(s) at the time and place(s) contracted for, or within a reasonable period of time thereafter as agreed to in writing by the Division of Procurement, or should the Contractor fail to make a timely replacement of rejected items/services when so required, the County may purchase items/services of comparable quality and quantity in the open market to replace the undelivered or rejected items/services. The Contractor shall reimburse the County for all costs in excess of the Agreement price when purchases are made in the open market; or, in the event that there is a balance the County owes to the Contractor from prior transactions, an amount equal to the additional expense incurred by the County as a result of the Contractor's nonperformance shall be deducted from the balance as payment.

6.4 Business, Professional, and Occupational License Requirement

All firms or individuals located or doing business in Loudoun County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance during the initial term of the Contract or any renewal period.

Wholesale and retail merchants without a business location in Loudoun County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Office of Commissioner of Revenue, telephone (703) 777-0260.

6.5 Payment of Taxes

All Contractors located or owning property in Loudoun County shall assure that all real and personal property taxes are paid.

The County will verify payment of all real and personal property taxes by the Contractor prior to the award of any Contract or Contract renewal.

6.6 Insurance

A. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or

property wherever located, resulting from any action, omission, commission, or operation under the Contract.

- B. The Contractor and all subcontractors shall, during the continuance of all work under the Contract provide the following:
1. Workers' compensation and Employer's Liability to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 2. Comprehensive General Liability insurance to protect the Contractor, and the interest of the County, its officers, employees, and agents against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. ***In addition, the insurance must cover all acts, errors, omissions, negligence, infringement of intellectual property, network/cyber security and privacy risks (including coverage for unauthorized access, failure of security, virus transmission, data damage/destruction/corruption, breach of privacy perils, unintentional or wrongful disclosure of information, as well as notification costs and regulatory defense).*** The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required.
 3. Automobile Liability insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor.
- C. The Contractor agrees to provide the above referenced policies with the following limits. Liability insurance limits may be arranged by General Liability and Automobile policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
1. Workers' Compensation:

Coverage A:	Statutory
Coverage B:	\$100,000
 2. General Liability:

Per Occurrence:	\$1,000,000
Personal/Advertising Injury:	\$1,000,000

General Aggregate:	\$2,000,000
Products/Completed Operations: aggregate	\$2,000,000
Fire Damage Legal Liability:	\$100,000

GL Coverage, excluding Products and Completed Operations, should be on a Per Project Basis

3. Automobile Liability:
Combined Single Limit: \$1,000,000

D. The following provisions shall be agreed to by the Contractor:

1. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
2. Liability Insurance "Claims Made" basis:
If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
 - a. Agree to provide certificates of insurance evidencing the above coverage for a period of two (2) years after final payment for the Contract for General Liability policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's work under this Contract, or
 - b. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
3. The Contractor must disclose the amount of deductible/self-insured retention applicable to the General Liability and Automobile Liability. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible/self-insured plan. If this provision is utilized, the

Contractor will be permitted to provide evidence of its ability to fund the deductible/self-insured retention.

4.
 - a. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VII.
 - b. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VII Rating.
 5.
 - a. The Contractor will provide an original signed Certificate of Insurance and such endorsements as prescribed herein.
 - b. The Contractor will provide on request certified copies of all insurance coverage related to the Contract within ten (10) business days of request by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative. Any request made under this provision will be deemed confidential and proprietary.
 - c. Any certificates provided shall indicate the Contract name and number.
 6. The County, its officers and employees shall be Endorsed to the Contractor's Automobile and General Liability policies as an "additional insured" with the provision that this coverage "is primary to all other coverage the County may possess." (Use "loss payee" where there is an insurable interest). A Certificate of Insurance evidencing the additional insured status must be presented to the County along with a copy of the Endorsement.
 7. Compliance by the Contractor with the foregoing requirements as to carrying insurance shall not relieve the Contractor of their liabilities provisions of the Contract.

E. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

F. The Contractor is to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

- G. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words "endeavor to" and ". . . but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.
- H. The Contractor agrees to waive all rights of subrogation against the County, its officers, employees, and agents.

6.7 Hold Harmless

The Contractor shall, indemnify, defend, and hold harmless the County from loss from all suits, actions, or claims of any kind brought as a consequence of any act or omission by the Contractor. The Contractor agrees that this clause shall include claims involving infringement of patent or copyright. For purposes of this paragraph, "County" and "Contractor" includes their employees, officials, agents, and representatives. "Contractor" also includes subcontractors and suppliers to the Contractor. The word "defend" means to provide legal counsel for the County or to reimburse the County for its attorneys' fees and costs related to the claim. This section shall survive the Contract. The County is prohibited from indemnifying Contractor and/or any other third parties.

6.8 Crime Insurance/Fidelity Bond

The Contractor shall provide a crime insurance/fidelity bond in an amount not less than one million dollars (\$1,000,000.00). The bond or policy shall include coverage for all directors, officers, agents, and employees of the PA. The bond or policy shall include coverage for third party fidelity and name the County of Loudoun, Virginia, and its clients as loss payee where their interests may appear. The bond or policy shall include coverage for extended theft and mysterious disappearance. The bond or policy may not include a condition requiring an arrest or conviction. The bond or policy shall include coverage for computer crime/fraud and funds transfer fraud.

6.9 Safety

All Contractors and subcontractors performing services for the County are required to and shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all Contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this Contract.

6.10 Notice of Required Disability Legislation Compliance *

The County is required to comply with state and federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

Specifically, Loudoun County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of state and local governments, including those that do not receive federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

6.11 Ethics in Public Contracting. *

The provisions contained in §§ 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the County. A copy of these provisions may be obtained from the Purchasing Agent upon request.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

6.12 Employment Discrimination by Contractors Prohibited *

Every Contract of over \$10,000 shall include the following provisions:

- A. During the performance of this Contract, the Contractor agrees as follows:
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide

occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

B. The Contractor will include the provisions of the foregoing paragraphs, 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

6.13 Drug-free Workplace *

Every Contract over \$10,000 shall include the following provision:

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

6.14 Faith-Based Organizations *

The County does not discriminate against faith-based organizations.

6.15 Immigration Reform and Control Act of 1986 *

By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

6.16 Substitutions

NO substitutions, additions or cancellations, including those of key personnel, are permitted after Contract award without written approval by the Division of Procurement. Where specific employees are proposed by the Contractor for the work, those employees shall perform the work as long as those employees work for the Contractor, either as employees or subcontractors, unless the County agrees to a substitution. Requests for substitutions will be reviewed by the County and approval may be given by the County at its sole discretion.

6.17 Workmanship and Inspection

All work under this Contract shall be performed in a skillful and workmanlike manner. The Contractor and its employees shall be professional and courteous at all times. The County reserves the right to require immediate removal of any Contractor employee from County service it deems unfit for service for any reason, not contrary to law. This right is non-negotiable and the Contractor agrees to this condition by accepting this Agreement. Further, the County may, from time to time, make inspections of the work performed under the Agreement. Any inspection by the County does not relieve the Contractor of any responsibility in meeting the Agreement requirements.

6.18 Exemption from Taxes *

Pursuant to Va. Code § 58.1-609.1, the County is exempt from Virginia State Sales or Use Taxes and Federal Excise Tax, therefore the Contractor shall not charge the County for Virginia State Sales or Use Taxes or Federal Excise Tax on the finished goods or products provided under the Contract. However, this exemption does not apply to the Contractor, and the Contractor shall be responsible for the payment of any sales, use, or excise tax it incurs in providing the goods required by the Contract, including, but not limited to, taxes on materials purchased by a Contractor for incorporation in or use on a construction project. Nothing in this section shall prohibit the Contractor from including its own sales tax expense in connection with the Contract in its Contract price.

6.19 Payment

Contractor shall receive payment for services through a Program Fee(s) to be charged to borrowers either as an application fee and/or a component of the C-PACE loan's interest rate (see Virginia Code § 15.2-958.3(A)(6)). The

County shall not be responsible for providing compensation to the Contractor for the services provided herein.

6.20 Payments to Subcontractors *

Within seven (7) days after receipt of amounts paid by the County for work performed by a subcontractor under this Contract, the Contractor shall either:

- A. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- B. Notify the County and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven (7) day period except for amounts withheld as allowed in item B. above.

Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as set forth above with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the County.

6.21 Assignment *

The Agreement may not be assigned in whole or in part without the prior written consent of the Division of Procurement. The rights and obligations of the Contractor are personal and may be performed only by the Contractor. Any purported assignment that does not comply with this provision is void. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

6.22 Termination

Subject to the provisions below, the Contract may be terminated by the County upon thirty (30) days advance written notice to the Contractor; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the Contract may be extended upon written approval of the County until said work or services are completed and accepted.

A. Termination for Convenience

The County may terminate this Contract for convenience at any time in which the case the parties shall negotiate reasonable termination costs.

B. Termination for Cause

In the event of Termination for Cause, the thirty (30) days advance notice is waived and the Contractor shall not be entitled to termination costs.

C. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

If funds are not appropriated or otherwise made available to support continuation of the performance of this Contract in a subsequent fiscal year, then the Contract shall be canceled and, to the extent permitted by law, the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.

6.23 Contractual Disputes *

The Contractor shall give written notice to the Purchasing Agent of intent to file a claim for money or other relief within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the work upon which the claim is to be based, whichever is earlier.

The claim, with supporting documentation, shall be submitted to the Purchasing Agent by US Mail, courier, or overnight delivery service, no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce his/her decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days of the County's receipt of the claim.

The Purchasing Agent's decision shall be final unless the Contractor appeals within thirty (30) days by submitting a written letter of appeal to the County Administrator, or his designee. The County Administrator shall render a decision within sixty (60) days of receipt of the appeal.

No Contractor shall institute any legal action until all statutory requirements have been met. Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.

6.24 Severability *

In the event that any provision shall be adjudged or decreed to be invalid, by a court of competent jurisdiction, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

6.25 Governing Law/Forum *

This Agreement shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia, without giving effect to its conflicts of laws provisions. Any judicial action shall be filed in the Commonwealth of Virginia, County of Loudoun. Contractor expressly waives any objection to venue or jurisdiction of the Loudoun County Circuit Court, Loudoun County, Virginia. Contractor expressly consents to waiver of service of process in an action pending in the Loudoun County Circuit Court pursuant to Virginia Code Section 8.01-286.1.

6.26 Notices

All notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO CONTRACTOR:

TBD

TO COUNTY:

Director of General Services
If by (a) or (b)
PO Box 7100
Leesburg, VA 20177

If by (c)
801 Sycolin Road
Leesburg, VA 20176

Notice is deemed to have been received: (i) on the date of delivery if delivered in person; (ii) on the first business day after the date of delivery if sent by same day or overnight courier service; or (iii) on the third business day after the date of mailing, if sent by certified or registered United States Mail, return receipt requested, postage and charges prepaid.

6.27 Licensure

To the extent required by the Commonwealth of Virginia (see e.g. 54.1-1100 *et seq.* of the Code of Virginia) or the County, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.

6.28 Authority to Transact Business in Virginia *

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law.

Any business entity described herein that enters into a Contract with the County pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The County may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

6.29 No Smoking

Smoking in all County buildings is prohibited. The County may designate a smoking area outside County facilities. Contractor shall only use those designated smoking areas. Certain County facilities, both inside and outside, may be entirely smoke free. Contractor shall inquire of the Contract Administrator or designee if a facility is entirely smoke free. Failure to adhere to the County's no smoking policies may lead to removal of Contractor employees and possible Contract termination.

6.30 Background Checks

Background checks of contractor employees and/or subcontractors may be conducted at the discretion of the County after the Contractor identifies those persons who will be working under the Agreement. When this occurs, the Contractor shall not send any workers to the job site whose information has not been provided for the County's background check. The background checks will be paid for by the County. If it is determined in the County's sole judgment, that an individual is not suitable due to the results of a background check, the County has right of refusal for that individual. If the Contractor needs to have materials delivered to the job site, deliveries from outside vendors must be approved in advance by the County Contract Administrator.

6.31 Confidentiality

A. Contractor Confidentiality

The Contractor acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to the County of Loudoun or its Program participants. Therefore, except as required by law, the Contractor agrees that its employees will not:

1. Access or attempt to access data that is unrelated to their job duties or authorizations as related to this Contract.
2. Access or attempt to access information beyond their stated authorization.
3. Disclose to any other person or allow any other person access to any information related to the County, Program participants, or any of its facilities, or any other user of this Contract that is proprietary or

confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes, and/or another transmission or sharing of data.

The Contractor understands that the County, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that the County may seek legal remedies available to it should such disclosure occur. Further, the Contractor understands that violations of this provision may result in Contract termination.

The Contractor further understands that information and data obtained during the performance of this agreement shall be considered confidential, during and following the term of this Contract, and will not be divulged without the Purchasing Agent's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by the County as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material.

B. County Confidentiality

The County understands that certain information provided by the Contractor during the performance of this Agreement may also contain confidential or proprietary information. Contractor acknowledges that this Contract and public records (as defined by §2.2-3701 of the Virginia Freedom of Information Act) provided pursuant to this Contract are subject to the Virginia Freedom of Information Act §§2.2-3700 et seq. and the Virginia Public Procurement Act §2.2-4342 of the Code of Virginia.

6.32 Counterparts

This Contract and any amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Contract or any amendment or renewal. A signature by any party to this Contract provided by facsimile or electronic mail is binding upon that party as if it were the original.

6.33 Force Majeure

A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the

contracted for works but excluding any industrial dispute which is specific to the performance of the works or this contract, interruption or failure of electricity or telephone service.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, that party must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract.

An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

The Contractor has no entitlement and County has no liability for: (1) any costs, losses, expenses, damages or the payment of any part of the contract price during an event of force majeure; and (2) any delay costs in any way incurred by the contractor due to an event of force majeure.

6.34 Survival of Terms

Upon discharge of this Agreement, Sections (Notice, Hold Harmless, Governing Law/Forum, and Contractual Disputes) of these Terms and Conditions continue and survive in full force and effect.

6.35 Non-Waiver.

No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of this Agreement constitute a continuing waiver unless otherwise expressly provided.

7.0 **EVALUATION OF PROPOSALS: SELECTION FACTORS**

The criteria set forth below will be used in the receipt of proposals and selection of the successful offeror.

The County Proposal Analysis Group (PAG) will review and evaluate each proposal and selection will be made on the basis of the criteria listed below. The offerors submitting proposals shall include with that proposal statements on the following:

Evaluation Criteria	Points
Demonstrated ability to meet the requirements of the Scope as outlined in Section 5.0, including any proposed changes to the Scope.	35
Experience of the firm and key personnel in administering similar C-PACE programs.	15

Cost and fee structure.	35
Overall quality and completeness of proposal (and interview, if shortlisted).	10
Compliance with Terms and Conditions.	5
Total	100

The PAG will collectively develop a composite rating which indicates the group's collective ranking of the highest rated proposals in a descending order. The PAG may then conduct interviews with only the top ranked offerors, usually the top two (2) or three (3) depending upon the number of proposals received. Negotiations shall be conducted with offerors so selected. The PAG may request a Best and Final Offer(s) (BAFO) and/or make a recommendation for the Contract award.

8.0 PROPOSAL SUBMISSION FORMAT

Offerors are to make written proposals that present the offeror's qualifications, its understanding of the work to be performed (as set forth in Section 5.0, Scope of Services), and its strategy for keeping Program fees reasonable. Offerors shall address each of the specific evaluation criteria listed below, in the following order. Failure to include a response to any of the requested information may be cause for the proposal to be considered nonresponsive and rejected.

- 8.1 Demonstrated ability to meet the requirements of the Scope contained in Section 5.0:
 - 8.1.1 Provide detailed information on how your firm will meet each requirement of the Scope, as listed in Section 5.0. In providing a response to this section, you may propose changes to the Scope of Services.
 - 8.1.2 Is your firm, directly or through a subcontractor, eligible to service C-PACE loans?
 - 8.1.3 Is your firm proposing to offer any optional services beyond what is required in Section 5.0? If so, please provide a detailed description of each service.
 - 8.1.4 Provide at least one program guide that your firm or its key personnel have used for other programs, if available.
 - 8.1.5 Provide a detailed implementation schedule based upon a July 1, 2019 award date. It is the County's expectation that the program be implemented as quickly as possible after contract award.
 - 8.1.6 Provide samples of education and marketing materials.
 - 8.1.7 Discuss capacity to process applications, track approvals and

funding status, etc.

8.1.8 Describe your firm's experience with building a C-PACE webpage. What type of content would be included? Would it be set up to allow for online submission of applications?

8.2 Experience of the firm and key personnel in administering similar C-PACE programs:

8.2.1 Provide a summary of your firm's history as it relates to administering C-PACE programs. Specifically highlight your firm's experience with C-PACE programs.

8.2.2 Provide a resume and information for the person or persons who would lead the program for the County, if awarded. Specifically describe his/her experience as it relates to administering C-PACE programs. This information also needs to include information on successful loan closures for the individual(s) listed.

8.2.3 Provide information on challenges and lessons learned from other programs.

8.2.4 Describe your firm's experience as it relates to knowledge of federal/state tax credits and grants that may supplement or support a C-PACE loan.

8.3 Cost and fee structure:

8.3.1 Provide a proposed fee arrangement that does not include County funds as the County will not reimburse the PA for any costs related to the Program. Your firm's fee arrangement must be reasonable yet adequate to recover all Program costs and must be in line with Section 5.10.

8.3.2 Provide a breakdown of how your firm arrived at the proposed fee structure. What costs does your fee structure cover?

8.3.3 Based upon the fee structure proposed in 8.3.1, provide a fee proposal for a sample loan in the amount of \$25,000.000.

8.3.4 Provide a breakdown of fees for the additional a la carte services.

8.3.5 How long is the proposed fee schedule guaranteed?

8.4 Compliance with Terms and Conditions:

8.4.1 Provide a statement of compliance with the Terms and Conditions as contained in section 6.0.

8.4.2 Specifically list any deviations and justification for each.

8.4.3 Include any additional terms that your firm would require to be included in a contract, if awarded.

9.0 INSTRUCTIONS FOR SUBMITTING PROPOSALS

9.1 Preparation and Submission of Proposals

- A. Before submitting a proposal, read the ENTIRE solicitation including the Terms and Conditions. Failure to read any part of this solicitation will not relieve an offeror of the Contractual obligations.
- B. All proposals must be submitted to the Division of Procurement in a sealed container. The face of the sealed container shall indicate the RFP number, time and date of opening and the title of the RFP.
- C. All proposals shall be signed in ink by the individual or authorized principals of the firm.
- D. All attachments to the RFP requiring execution by the offeror are to be returned with the proposal.
- E. Proposals must be received by the Division of Procurement prior to 4:00 p.m., local Atomic time on April 22, 2019. An atomic clock is located in the Division of Procurement and can also be verified by visiting <http://www.time.gov/timezone.cgi?Eastern/d/-5/java>. Requests for extensions of this time and date will not be granted, unless deemed to be in the County's best interest. Offerors mailing their proposals shall allow for sufficient mail time to ensure receipt of their proposals by the Division of Procurement by the time and date fixed for acceptance of the proposals. Proposals or unsolicited amendments to proposals received by the County after the acceptance date and time will not be considered. Proposals will be publicly accepted and logged in at the time and date specified above.
- F. Proposals may be submitted via one of the following. IUS Mail to PO Box 7000, Leesburg, Virginia 20177-7000; or hand delivered or private carrier (UPS/FedEx) to 1 Harrison Street, S.E., 4th Floor, Leesburg, Virginia 20175. Faxed and e-mailed proposals will not be accepted. (Please note: Offerors choosing to submit proposals via US Mail should allow *at least* an additional twenty-four (24) hours in the delivery process for internal County mailroom distribution).
- G. Each offeror shall submit one (1) original and five (5) copies of their proposal to the County's Division of Procurement as indicated on the cover sheet of this RFP.

9.2 Questions and Inquiries

Questions and inquiries, both oral and written, will be accepted from any and all offerors. However, when requested, complex oral questions shall be submitted in writing. The Division of Procurement is the sole point of contact for this solicitation unless otherwise instructed herein. Unauthorized contact with other Loudoun County staff regarding the RFP may result in the disqualification of the offeror. Inquiries pertaining to the RFP must give

the RFP number, time and date of opening and the title of the RFP. Material questions will be answered in writing with an Addendum provided, however, that all questions are received at least ten (10) days in advance of the proposal opening date. It is the responsibility of all offerors to ensure that they have received all Addendums and to include signed copies with their proposal. Addendums can be downloaded from www.loudoun.gov/procurement.

9.3 Firm Pricing for County Acceptance

Proposal pricing for proposed Program Fee(s) must be firm for County acceptance for a minimum of ninety (90) days from proposal receipt date. "Discount from list" proposals are not acceptable unless requested.

9.4 Proprietary Information

Trade secrets or proprietary information submitted by an offeror in connection with this solicitation shall not be subject to disclosure under the Virginia Freedom of Information Act; however, **pursuant to § 2.2-4342 of the Code of Virginia, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must clearly identify the data or other materials to be protected and state the reasons why protection is necessary. Failure to abide by this procedure may result in disclosure of the offeror's information.** Offerors shall not mark sections of their proposal as proprietary if they are to be part of the award of the contract and are of a "Material" nature.

9.5 Authority to Bind Firm in Contract

Proposals MUST give full firm name and address of offeror. Failure to manually sign proposal may disqualify it. Person signing proposal will show TITLE or AUTHORITY TO BIND THE FIRM IN A CONTRACT. Firm name and authorized signature must appear on proposal in the space provided on the pricing page. Those authorized to sign are as follows:

- If a sole proprietorship, the owner may sign.
- If a general partnership, any general partner may sign.
- If a limited partnership, a general partner must sign.
- If a limited liability company, a "member" may sign or "manager" must sign if so specified by the articles or organization.
- If a regular corporation, the CEO, President or Vice-President must sign.
- Others may be granted authority to sign but the County requires that a corporate document authorizing him/her to sign be submitted with proposal.

9.6 Withdrawal of Proposals

- A. All proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance.

- B. Proposals may be withdrawn on written request from the offeror at the address shown in the solicitation prior to the time of acceptance.
- C. Negligence on the part of the offeror in preparing the proposal confers no right of withdrawal after the time fixed for the acceptance of the proposals.

9.7 Subcontractors

Offerors shall include a list of all subcontractors with their proposal. Proposals shall also include a statement of the subcontractors' qualifications. The County reserves the right to reject the successful offeror's selection of subcontractors for good cause. If a subcontractor is rejected the offeror may replace that subcontractor with another subcontractor subject to the approval of the County. Any such replacement shall be at no additional expense to the County nor shall it result in an extension of time without the County's approval.

9.8 Late Proposals

LATE proposals will be returned to offeror UNOPENED, if RFP number, acceptance date and offeror's return address is shown on the container.

9.9 Rights of County

The County reserves the right to accept or reject all or any part of any proposal, waive informalities, and award the contract to best serve the interest of the County. Informality shall mean a minor defect or variation of a proposal from the exact requirements of the Request for Proposal which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

9.10 Prohibition as Subcontractors

No offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

9.11 Proposed Changes to Scope of Services

The County reserves the right to consider proposed changes to the Scope of Services in Section 5.0. If an offeror proposes any deviation from the requirements prescribed in the Scope of Services, the offeror must clearly indicate the proposed change in its proposal. If a substitution is proposed to a requirement included in the Scope, the substitution must be clearly indicated in the proposal. The County reserves the right to accept or reject any proposed changes to the Scope.

9.12 Miscellaneous Requirements

- A. The County will not be responsible for any expenses incurred by an offeror in preparing and submitting a proposal. All proposals shall

provide a straight-forward, concise delineation of the offeror's capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.

- B. Offerors who submit a proposal in response to this RFP may be required to make an oral presentation of their proposal. The Division of Procurement will schedule the time and location for this presentation.
- C. Selected contents of the proposal submitted by the successful offeror and this RFP will become part of any contract awarded as a result of the Scope of Services contained herein. The successful offeror will be expected to sign a contract with the County.
- D. The County reserves the right to reject any and all proposals received by reason of this request, or to negotiate separately in any manner necessary to serve the best interests of the County. Offerors whose proposals are not accepted will be notified in writing.

9.13 Notice of Award

A Notice of Award will be posted on the County's web site (www.loudoun.gov) and on the bulletin board located in the Division of Procurement, 4th floor, One Harrison St, SE, Leesburg, Virginia 20175.

9.14 Protest

Offerors may refer to §§ 2.2-4357 through 2.2-4364 of the Code of Virginia to determine their remedies concerning this competitive process. Protests shall be submitted to the Director, Finance and Procurement.

9.15 Debarment

By submitting a proposal, the offeror is certifying that offeror is not currently debarred by the County, or in a procurement involving federal funds, by the Federal Government. A copy of the County's debarment procedure in accordance with § 2.2-4321 of the Code of Virginia is available upon request.

9.16 Proof of Authority to Transact Business in Virginia

An offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the offeror is not required to be so authorized. Any offeror described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies

and procedures established to implement this section is granted by the Purchasing Agent or his designee. The SCC may be reached at (804) 371-9733 or at <http://www.scc.virginia.gov/default.aspx>.

9.17 Cooperative Procurement

As authorized in § 2.2-4304 of the Code of Virginia, this procurement is being conducted on behalf of and may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the contractor.

9.18 Insurance Coverage

Offerors shall include with their proposal a copy of their current Certificate of Insurance that illustrates the current level of coverage the offeror carries. The Certificate can be a current file copy and does not need to include any "additional insured" language for the County.

9.19 Legal Action

No offeror or potential offeror shall institute any legal action until all statutory requirements have been met.

9.20 Certification by Contractor as to Felony Convictions

No one with a felony conviction may be employed under this Contract and by the signature of its authorized official on the response to this Solicitation, the Contractor certifies that neither the contracting official nor any of the Contractor's employees, agents or subcontractors who will work under this Agreement have been convicted of a felony.



Loudoun County, Virginia

Division of Procurement
One Harrison Street, 4th Floor
Leesburg, Virginia 20175

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM ADMINISTRATOR

PROPOSAL SUBMISSION FORMS

THE FIRM OF: _____

Address: _____

FEIN _____

Hereby agree to provide the requested services as defined in Request for Proposal No. QQ-01xxx for the price as stated in the price proposal.

- A. Return the following with your proposal. If offeror fails to provide with their proposal, items shall be provided within twenty-four (24) hours of proposal opening.

ITEM:	INCLUDED: (X)
1. W-9 Form:	_____
2. Certificate of Insurance:	_____
3. Addenda, if any (Informality):	_____

- B. Failure to provide the following items with your proposal shall be cause for rejection of proposal as non-responsive and/or non-responsible. It is the responsibility of the offeror to ensure that it has received all addenda and to include signed copies with their proposal (9.2).

ITEM:	INCLUDED: (X)
1. Addenda, if any:	_____
2. Payment Terms:	_____
3. Proof of Authority to Transact Business in Virginia Form:	_____
4. Minimum Qualification Documentation (4.0):	_____
5. Proposal Response Information (8.0)	_____

Person to contact regarding this proposal: _____

Title: _____ Phone: _____ Fax: _____

E-mail: _____

Name of person authorized to bind the Firm (9.9): _____

Signature: _____ Date: _____

By signing and submitting a proposal, your firm acknowledges and agrees that it has read and understands the RFP documents.



PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL. FAILURE TO INCLUDE THIS FORM SHALL RESULT IN REJECTION OF YOUR BID/PROPOSAL

Pursuant to Virginia Code §2.2-4311.2, a bidder/offeree organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid/ proposal the identification number issued to it by the State Corporation Commission ("SCC"). Any bidder/offeree that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the offeror is not required to be so authorized. Any bidder/offeree described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Purchasing Agent or his designee.

If this bid/proposal for goods or services is accepted by the County of Loudoun, Virginia, the undersigned agrees that the requirements of the Code of Virginia Section 2.2-4311.2 have been met.

Please complete the following by checking the appropriate line that applies and providing the requested information. **PLEASE NOTE: The SCC number is NOT your federal ID number or business license number.**

A. _____ Bidder/offeree is a Virginia business entity organized and authorized to transact business in Virginia by the SCC and such bidder's/offeree's Identification Number issued to it by the SCC is _____.

B. _____ Bidder/offeree is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such bidder's/offeree's Identification Number issued to it by the SCC is _____.

C. _____ Bidder/offeree does not have an Identification Number issued to it by the SCC and such bidder/offeree is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

Please attach additional sheets of paper if you need to explain why such bidder/offeree is not required to be authorized to transact business in Virginia.

Legal Name of Company (as listed on W-9)

Legal Name of Bidder/Offeree

Date

Authorized Signature

Print or Type Name and Title

HOW DID YOU HEAR ABOUT THIS REQUEST FOR PROPOSAL?

RFQ 74773

Please take the time to mark the appropriate line and return with your proposal.

<input type="checkbox"/> Associated Builders & contractors	<input type="checkbox"/> Loudoun Times Mirror
<input type="checkbox"/> Bid Net	<input type="checkbox"/> Our Web Site
<input type="checkbox"/> Builder's Exchange of Virginia	<input type="checkbox"/> NIGP
<input type="checkbox"/> Email notification from Loudoun County	<input type="checkbox"/> The Plan Room
<input type="checkbox"/> Dodge Reports	<input type="checkbox"/> Reed Construction Data
<input type="checkbox"/>	<input type="checkbox"/> Tempos Del Mundo
<input type="checkbox"/> India This Week	<input type="checkbox"/> Valley Construction News
<input type="checkbox"/> LS Caldwell & Associates	<input type="checkbox"/> Virginia Business Opportunities
<input type="checkbox"/> Loudoun Co Small Business Development Center	<input type="checkbox"/> VA Dept. of Minority Business Enterprises
<input type="checkbox"/> Loudoun Co Chamber of Commerce	<input type="checkbox"/> RAPID

☐ Other _____

SERVICE RESPONSE CARD

RFQ 74773

Date of Service: _____

How did we do?

Please let us know how we did in serving you. We'd like to know if we are serving you at an acceptable level.

How would you rate the way your request for this document was handled?

Excellent ☐ Good ☐ Average ☐ Fair ☐ Poor ☐

Did you have contact with Procurement staff? ☐

How would you rate the manner in which you were treated by the Procurement staff?

Excellent ☐ Good ☐ Average ☐ Fair ☐ Poor ☐

How would you rate the overall response to your request?

Excellent ☐ Good ☐ Average ☐ Fair ☐ Poor ☐

COMMENTS: _____

Thank you for your response!

We can better assess our service to *you* through feedback from *you*.

Your Name: _____

Address: _____

Phone: _____ (day) _____ evening

Please return completed form to: Patty Cogle • Procurement •
PO Box 7000 • Leesburg, VA 20177



Cooperative Rider Clause

The Mid-Atlantic Purchasing Team (MAPT) is the agreement between the Metropolitan Washington Council of Governments (“MWCOCG”) and the Baltimore Metropolitan Council (“BMC”) to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region (“region”).

Format

A lead agency format is used to accomplish this work. The Lead Agency in this procurement has included this MAPT Cooperative Rider Clause in this solicitation indicating its willingness to allow other public entities to participate pursuant to the following Terms and Conditions:

1. Terms

- 1.1 Participating entities, through their use of the Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the participating entity.
- 1.2 Participating entities may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.

2. Other Conditions - Contract and Reporting

- 2.1 The contract resulting from this solicitation shall be governed by and "construed in accordance with the laws of the State/jurisdiction in which the participating entity officially is located;
- 2.2 To provide to MWCOCG and/or BMC contract usage reporting information, including but not limited to quantity, unit pricing and total volume of sales by entity, as well reporting other participating entities added on the contract, on demand and without further approval of contract participants;
- 2.3 Contract obligations rest solely with the participating entities only;
- 2.4 Significant changes in total contract value may result in further negotiations of contract pricing with the lead agency and participating entities.

In pricing and other conditions, vendors are urged to consider the broad reach and appeal of MAPT with public and non-profit entities in this region.

A list of the participating members of the Mid-Atlantic Purchasing Team can be found at the following web links www.mwcog.org/purchasing-and-bids/cooperative-purchasing/member-links/ and <http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives>

ATTACHMENT 1

ENACT CHAPTER ____ THE CODIFIED ORDINANCES OF LOUDOUN COUNTY, VIRGINIA.

BE IT ORDAINED by the Board of Supervisors of Loudoun County, Virginia that a new chapter of the Codified Ordinances of Loudoun County, Virginia is enacted, to read as follows:

COMMERICAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

Article I. General

§ # -01. Purpose

§ # -02. Definitions

§ # -03. Effective Date

Article II. Program Structure

§ # -04. C-PACE Program; Eligible Improvements

**§ # -05. C-PACE Loan Requirements; Program Fees; Reporting;
Program Administrator; Program Guide**

**§ # -06. Levy of Assessment; Recordation; Priority; Amendment;
Enforcement; Collection Costs**

§ # -07. Role of the County; Limitation of Liability

§ # -08. Additional Provisions

ARTICLE I. GENERAL

§ # -01. Purpose

The purpose of this chapter is to create a “Loudoun County Commercial Property Assessed Clean Energy (C-PACE) Financing Program,” in accordance with the Commonwealth of Virginia’s Clean Energy Financing Law, § 15.2-958.3 of the Code of Virginia of 1950, as amended (hereinafter the “Act”). The C-PACE Program will facilitate loans made by Capital Providers to Borrowers to finance renewable energy production and distribution facilities, energy efficiency improvements, or water usage efficiency improvements. Subject to the limitations set forth in this chapter, the Act, or other applicable law, each C-PACE Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by a voluntary special assessment lien on the property that is the subject of such Loan.

§ # -02. Definitions

“Act” means Virginia’s “financing clean energy programs” law, § 15.2-958.3 of the Code of Virginia of 1950, as amended.

“Amendment” means an amendment of the C-PACE Lien as permitted under the Loan Documents and Program Guide.

“Assignment” means an assignment of the Loan Payments and/or C-PACE Lien pursuant to the terms of the assignment document.

“Board” means the Board of Supervisors of Loudoun County, Virginia.

“Borrower” means (A) the owner(s) of Eligible Property who obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guide; or (B) a successor in title to the Borrower.

“Capital Provider” means (A) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guide to originate a C-PACE Loan and its successors and assigns; or (B) the current holder of a C-PACE Loan.

“Commonwealth” means the “Commonwealth of Virginia.”

“County” means County of Loudoun, Virginia.

“C-PACE” means Commercial Property Assessed Clean Energy.

“C-PACE Program Agreement” means the Agreement between the Borrower, County, and Capital Provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program; the Borrower’s acknowledgment and consent for the County to impose a voluntary special assessment and record a C-PACE Lien Certificate against the Borrower’s Eligible Property; and a summary of the terms of the C-PACE Loan. A copy of the draft C-PACE Program Agreement is included herein as Appendix A-1.

“C-PACE Lien” or “Lien” means the voluntary special assessment lien levied against the Property as security for the C-PACE Loan.

“C-PACE Lien Certificate” means the voluntary special assessment lien document duly recorded among the Land Records against an Eligible Property to secure a C-PACE Loan.

“C-PACE Loan” or “Loan” means a loan from a Capital Provider to a Borrower to finance a Project, in accordance with the Program Guide.

“C-PACE Program” or “Program” means the program established by the County through this chapter, in accordance with the Act, that facilitates the financing of Eligible Improvements and provides for a C-PACE Lien to be levied and recorded against the Property to secure the C-PACE Loan.

“Delinquent Payment” means any C-PACE Loan payment that was not paid by a Borrower in accordance with the Loan Documents.

“DMME Guidelines” means the Uniform Statewide Financial Underwriting Guidelines for C-PACE Loans, issued on December 1, 2015, by the PACE Stakeholder Committee organized by the Virginia Department of Mines, Minerals, and Energy (DMME), as amended from time to time.

“Eligible Improvement” means the initial acquisition and installation of clean energy, energy efficiency, or water efficiency improvements for both existing properties and new construction, as further prescribed in this chapter and the Program Guide.

“Eligible Property” or “Property” means real property located within the County other than residential property or a condominium as defined in Virginia Code § 55-79.2.

“Financing Agreement” means the written agreement, as may be amended, modified, or supplemented from time to time, between a Borrower and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements.

“Land Records” means the land records of the Clerk of the Loudoun County Circuit Court.

“Loan Amount” means the aggregate amount of a Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, all as provided for in the Loan Documents.

“Loan Documents” means the C-PACE Program Agreement, Financing Agreement, a C-PACE Lien Certificate, and any other document, agreement, or instrument executed in connection with a C-PACE Loan.

“Loan Payment,” means the periodic installment payments of the C-PACE Loan by a Borrower, due and payable to the County or Capital Provider as permitted by the Act in such amounts and at such times as described in the Loan Documents.

“Program Administrator” means the person or entity retained by the County to administer the Program in accordance with the requirements of the Act, this chapter, and the Program Guide.

“Program Fee(s)” means the fee(s) authorized by the Act and charged to participating Borrowers to cover the costs to design and administer the Program, including compensation of the Program Administrator and recovery of expenses incurred by the County.

“Program Guide” means a comprehensive document setting forth the procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements applicable to the governance and administration of the Program.

“Program Manager” means the County Administrator or such person designated in writing by the County Administrator to supervise the Program and act as liaison with the Program Administrator.

“Project” means the construction or installation of Eligible Improvements on Eligible Property.

“Residential Property” means improved real property used or occupied, or intended to be used or occupied, for residential purposes.

“Stabilized Value” means the market value of the Property after it reaches stabilized occupancy as evidenced by an appraisal of the Property.

“Stabilized Occupancy” means the occupancy level that an income producing Property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties.

“Subordination Agreement” means a written agreement executed by the holder of each existing lien, mortgage, or deed of trust on Eligible Property that is the subject of a C-PACE Loan, which allows the C-PACE lien to have senior priority to the existing mortgage or deed of trust.

“Useful Life” means the normal operating life of the fixed asset as determined by Generally Accepted Accounting Principles (GAAP).

§ # -03. Effective Date

This chapter shall become effective immediately following its adoption.

ARTICLE II. PROGRAM STRUCTURE

§ # -04. C-PACE Program; Eligible Improvements

(a) *C-Pace Program*: The C-PACE Program shall be available throughout Loudoun County, provided that the Borrower, the Property, and the proposed Eligible Improvements all qualify for the Program. The following types of Eligible Improvements may be financed with a C-PACE Loan:

- (1) Renewable energy production and distribution facilities (e.g., solar photovoltaic, solar thermal, wind, wave and/or tidal energy, and the storage and/or distribution of the energy produced thereby);
- (2) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or weather-stripping);
- (3) Water usage efficiency improvements (e.g., recovery, purification, recycling, and other forms of water conservation);
- (4) Construction, renovation, or retrofitting of a Property directly related to the accomplishment of any purpose listed in subsections (1), (2), or (3) above, whether such Eligible Improvement was erected or installed in or on a building or on the ground, it being the express intention of the County to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; or,
- (5) Any other category of improvement approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the C-PACE Act and the Program.

(b) *Use of C-PACE Loan Proceeds.* The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to Eligible Improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), Program Fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.

(c) *Program Applications; Prioritization:* The Program Administrator will develop a Program application process that allows for the review and approval of proposed Eligible Improvements and C-PACE Loan Documents. Program applications will be processed on a first come, first serve basis; provided, however, that the applicant meets eligibility requirements as set forth in the Program Guide.

§ # -05. C-PACE Loan Requirements; Program Fees; Reporting; Program Administrator; Program Guide

(a) *Source of Loans:* C-PACE Loans shall be originated by Capital Providers. The County shall have no obligation to originate or guarantee any C-PACE Loans.

(b) *C-PACE Loan Amount Thresholds:* The minimum Loan Amount that may be financed for each Project is fifty thousand dollars (\$50,000). The maximum Loan Amount that may be financed for each Project is twenty-five million dollars (\$25,000,000) or thirty percent (30%) of the Stabilized Value of the Property, whichever is greater. The Program Administrator may also accept other forms of valuation including, but not limited to, assessed value or value derived from a minimum assessment agreement. There shall be no limit on the total value of all C-PACE Loans issued under the Program.

(c) *C-PACE Loan Interest:* The interest rate of a C-PACE Loan shall be as set forth in the Loan Documents.

(d) *C-PACE Loan Term:* The term of a C-PACE Loan shall not exceed the Useful Life of the Project Improvement with the longest Useful Life or thirty (30) years, whichever is less.

(e) *C-PACE Loan Amortization:* The amount of the C-PACE Loan shall be fully amortized in the C-PACE Payments over the term of the C-PACE Loan as agreed by the Borrower and the Capital Provider.

(f) *Apportionment of Costs:* All of the costs incidental to the financing, administration, collection, and enforcement of the C-PACE Loan shall be borne by the Borrower.

(g) *Financing Agreements:* Capital Providers may use their own Financing Agreements for C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this chapter, the Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the Act, and the C-PACE Program Agreement shall prevail.

(h) *C-PACE Program Agreement:* In order to participate in the C-PACE Program, Borrower and Capital Provider shall enter into a C-PACE Program Agreement with the County, which sets forth certain terms and conditions for participation in the County's C-PACE Program. This

Agreement shall be binding upon the parties and their respective successors and assigns until the C-PACE Loan is paid in full. Each C-PACE Program Agreement shall be in substantially the form provided herein in Appendix A-1. The C-PACE Program Agreement may be modified as necessary to further the Program's purpose and to encourage Program participation, including such additions, deletions, or alterations as may be approved by the Program Manager and County Attorney, so long as such modifications do not conflict with the Program Guide, this chapter, or the Act.

(i) *Repayment of C-PACE Loan; Collection of Loan Payments:* C-PACE Loans will be repaid by the Borrower through Loan Payments made in the amounts and at such times as set forth in the Loan Documents and Program Guide. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other Loan Documents, for the servicing of the C-PACE Loans and the collection of Loan Payments. In the alternative, C-PACE Loans may be serviced by the Program Administrator. For Loans serviced by the Program Administrator, the Borrower shall remit all Loan Payments to the County. The County shall remit Loan Payments it receives from Borrowers to the Capital Provider within thirty (30) days of receipt.

(j) *C-PACE Loan Assumed:* The Borrower shall assume the obligation to repay all remaining unpaid Loan Payments, whether it obtained ownership of the Property voluntarily or involuntarily, which are due upon acquisition of the Property, if any, and which accrue during Borrower's period of ownership. Only the current Loan Payment and any Delinquent Payments, together with any costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

(k) *Transfer of C-PACE Loans:* C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided that Capital Provider shall (i) notify the Borrower and Program Administrator prior to the billing date of the next Loan Payment due, (ii) record a C-PACE Loan Assignment among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment to the Borrower, County, and Program Administrator as set forth in the C-PACE Program Agreement and Program Guide. Recordation of the C-PACE Assignment shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the Loan Documents.

(l) *Program Fees:* The Program Fee(s) and its effective date shall be set by a resolution of the Board and may be amended from time to time in the same manner. The Program Guide shall include the most current Program Fee(s) in effect. Program Fee(s) shall be designed to cover the County's and Program Administrator's costs to administer the Program and shall be paid by the Borrower as set forth in the Loan Documents. If the Program Fee is implemented in whole or in part as a component of the C-PACE Loan's interest rate, it may be capped at a dollar amount designed to encourage participation in the Program.

(m) *Notification of Proposed Loan and Closing:* The Program Guide will set forth the C-PACE Loan notification requirements and Loan closing process.

(n) *Reporting*: The County may require the Capital Provider and/or the Program Administrator to provide a written report with summary information regarding the C-PACE Loan Program, the portfolio performance of participating Capital Providers, or other Program statistics as required in the Program Guide.

(o) *Program Administrator*: The County will enter into a contract with a Program Administrator pursuant to the County's procurement process and in accordance with any requirements of the Virginia Public Procurement Act. The Program Administrator's duties shall be those set forth in its contract with the County, which may include, but not be limited to: (i) creating the Program Guide and revising and updating the Guide, as necessary; (ii) coordinating the billing and collection process by serving as a servicer for C-PACE Loans or subcontracting with a qualified C-PACE Loan servicer; (iii) processing C-PACE applications to determine Project eligibility; (iv) ensuring compliance with the requirements of the C-PACE Program; and (v) performing marketing and outreach with regard to the C-PACE Program.

(p) *Program Guide*: The Program Guide shall be developed by the Program Administrator under the direction of, and in consultation with the Program Manager. The Program Guide and any subsequent amendments thereto shall become effective only (i) to the extent that the Program Guide and such amendments do not contravene this chapter or the Act, and (ii) after review by the County Attorney and written approval by Program Manager. The Program Guide may incorporate the DMME Guidelines or other appropriate underwriting guidelines consistent with this type of Program. The Program Guide will be designed to create an open, competitive, and efficient Program. The Program Administrator may modify the Program Guide from time to time subject to the approval of the Program Manager and in accordance with the intent and purpose of the C-PACE Program as approved by the Board.

§ # -06. Levy of Assessment; Recordation; Priority; Amendment; Enforcement and Collection Costs

(a) *Levy of Voluntary Special Assessment Lien*: Beginning on the effective date of this chapter and for each C-PACE Loan made under the Program, the Board hereby levies a voluntary special assessment (C-PACE Lien) against each Property benefitting from Eligible Improvements financed with C-PACE Loans, in an amount equal to the C-PACE Loan, upon recordation of the C-PACE Lien Certificate.

(b) *Recordation of C-PACE Lien Certificate*: Each C-PACE Loan shall be secured by a C-PACE Lien as evidenced by the recordation of the C-PACE Lien Certificate among the Land Records. The Program Manager, on behalf of the County, is hereby authorized to execute the C-PACE Lien Certificate prior to recordation. The C-PACE Lien Certificate shall be filed in the Land Records upon execution of the Loan Documents and funding of the Project.

(c) *Priority*: The C-PACE Lien shall have the same priority as a real property tax lien and priority over any previously recorded lien, mortgage, or deed of trust, as evidenced by Subordination Agreement(s) obtained from each prior lien holder, mortgagee, or trustee(s) of any deed(s) of trust. Only the current Loan Payment and any Delinquent Payments shall constitute a first lien on the Property.

(d) *Amendment of Lien*: Upon written request by a Capital Provider in accordance with the Program Guide, the Program Manager may execute an amendment of the C-PACE Lien after the closing of a C-PACE Loan. The Amendment will be recorded in the Land Records.

(e) *Enforcement and Collection Costs*: In the event of Borrower's default under the terms of the Loan Documents, the County shall enforce the C-PACE Lien for the amount of the Delinquent Payments, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced. In the alternative, the County may assign the C-PACE Lien to the Capital Provider by executing a C-PACE Lien Assignment and recording the Assignment in the Land Records. Upon such assignment, the Capital Provider may enforce the C-PACE Lien according to the terms of the Loan Documents. All collection and enforcement costs, expenses, interest, and penalties incurred by the County or Capital Provider, as applicable and consistent with the Act, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider from enforcing the C-PACE Lien to the fullest extent permitted by the Loan Documents, the Act, or general law.

§ # -07. Role of the County; Limitation of Liability

By executing the Loan Documents including the C-PACE Program Agreement, or by otherwise participating in the Program, the Borrower and Capital Provider acknowledge and agree that as a condition of participation in the Program: (i) the County undertakes no obligations under the Program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Borrower, the County has no obligation to use County funds to make Loan Payments to any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Borrower and Capital Provider; (iii) no C-PACE Loan, Loan Payment, C-PACE Lien, or other obligation arising from any Loan Document, the Act, or the chapter shall be backed by the credit of the County, the Commonwealth, or its political subdivisions, including, without limitation, County taxes or other County funds; (iv) no C-PACE Loan, Loan Payment, C-PACE Lien or other obligation arising from any Loan Document, the Act, or the chapter shall constitute an indebtedness of the County within the meaning of any constitutional or statutory debt limitation or restriction; (v) the County has not made any representations or warranties, financial or otherwise, concerning a Borrower, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the County makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any Loan Document, or any Assignment or amendment thereof; (vii) the County assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; (viii) each Borrower or Capital Provider shall, upon request, provide the County with any information associated with a Project or a C-PACE Loan that is reasonably necessary to confirm that the Project or C-PACE Loan satisfies the requirements of the Program Guide; and (ix) each Borrower, Capital Provider, or other participant under the Program, shall comply with all applicable requirements of the Program Guide.

§ # -08. Additional Provisions

(a) *Required Program Guide Provisions:* The Program Guide, including any amendments thereto, shall contain the following provisions:

"This Program Guide (this "Guide") has been prepared for purpose of providing a more detailed description of the requirements, rules, procedures, and fees applicable to the Loudoun County Commercial Property Assessed Clean Energy (C-PACE) Financing Program (the "Program"). This Guide and all provisions hereof are subject to the applicable chapter of the Codified Ordinances of the County of Loudoun, Virginia (the "Chapter"), in all respects including, without limitation, the provisions of the Chapter governing the amendment of this Guide. In the case of any conflict between the provisions of this Guide and the provisions of the Chapter, the provisions of the Chapter shall control."

"THIS GUIDE IS ONLY A REFERENCE DOCUMENT, AND CREATES NO LEGAL RIGHTS IN FAVOR OF ANY BORROWER, CAPITAL PROVIDER, CONTRACTOR, OR ANY OTHER PERSON, NOR DOES IT IMPOSE ANY LEGAL DUTY OR OBLIGATION ON THE COUNTY OF LOUDOUN, VIRGINIA."

(b) *Severability:* The provisions of this chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the chapter or provision to any person or circumstance is invalid, the remaining provisions of the chapter shall not be affected by that decision and continue in full force and effect.

APPENDIX A-1

LOUDOUN COUNTY COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the "Agreement") is made and entered into as of the date it is fully executed (the "Effective Date"), by and between the **COUNTY OF LOUDOUN, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County"), _____ (the "Borrower"), and _____ (the "Capital Provider"), and their respective successors and assigns (collectively, the "parties").

RECITALS

WHEREAS, Virginia's "financing clean energy programs" law, § 15.2-958.3 of the Code of Virginia of 1950, as amended (the "Act") authorizes Virginia localities to adopt a Commercial Property Assessed Clean Energy ("C-PACE") Program (the "Program"); and

WHEREAS, the County's C-PACE Program facilitates C-PACE Loans provided by Capital Providers for renewable energy production and distribution facilities; energy usage efficiency systems, water usage efficiency systems, and other similar improvements as authorized by the Act and the Program; and

WHEREAS, each C-PACE Loan is secured by a voluntary special assessment lien (the "C-PACE Lien") authorized and given voluntarily by the Borrower to the County to ensure repayment of the C-PACE Loan; and

WHEREAS, pursuant to Chapter _____ of the Codified Ordinances of Loudoun County, Virginia (the "Ordinance") and the Act, the County, Borrower, and Capital Provider are required to enter into a written agreement specifying the terms and conditions for participating in the County's C-PACE Program;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Act and Ordinance, the parties agree as follows:

Section 1 - Definitions.

Unless otherwise defined herein, capitalized terms in this Agreement shall have the same meanings as set forth in the Ordinance.

Section 2 - Representations.

(a) Borrower is the legal and record owner of the Eligible Property more particularly described in Exhibit A (the "Property").

(b) Borrower applied to participate in the County's C-PACE Program and desires to

obtain a C-PACE Loan to install certain Eligible Improvements ("Project" or "Project Improvements") on the Property.

(c) Borrower has or will enter into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. A summary of the terms of the C-PACE Loan, including an Assessment Payment Schedule, are set forth in Exhibit B ("Loan Terms"). Borrower and Capital Provider acknowledge and agree that the Financing Agreement may include only those costs and fees for which a C-PACE Lien may be imposed under the Act and Ordinance.

(d) The parties acknowledge and agree that should Borrower default on the C-PACE Loan, the County will enforce the C-PACE Lien for the benefit of Capital Provider according to the Loan Documents, the Act, and Ordinance. [In the alternative, the County may assign the C-PACE Lien to the Capital Provider for enforcement according to the terms of the Loan Documents.]

(e) Borrower and Capital Provider confirm that they have obtained Subordination Agreements for each deed of trust or mortgage lien against the Property.

Section 3 – Program Terms and Conditions.

The parties agree as follows:

(a) C-PACE Loan. Capital Provider will provide financing for the Project in accordance with the C-PACE Loan Documents. The Loan Terms are summarized in Exhibit B.

(b) Program Fee(s): Borrower agrees to pay Program Fee(s) in the amount of \$ _____ as follows: _____.

(c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to Borrower under the Program, Borrower hereby requests and authorizes County to levy a C-PACE Lien against the Property in the Loan Amount set forth in the Loan Terms (Exhibit B). As evidence of the C-PACE Lien, Borrower requests that the County execute a C-PACE Lien Certificate that will be recorded in the Land Records of Loudoun County, Virginia.

(d) Loan Payments. The C-PACE Loan is due and payable to the Capital Provider [or County for the benefit of the Capital Provider] as set forth in the Loan Terms (Exhibit B) and remitted as follows: _____.

[Program Fee(s) shall be deducted from Loan proceeds at funding or from Loan Payments in accordance with the Loan Documents and Program Guide.] Upon notice from the Program Administrator or Capital Provider that all amounts owing have been paid in full, the County will execute a release of the C-PACE Lien. Thereafter, the Program Administrator or Capital Provider will record the release.

(e) County's Remittance of Loan Payments to Capital Provider: The County will remit all payments to the Capital Provider within thirty (30) days of receipt, subject to Program Fees as set forth in the Loan Documents, as follows:

(f) Maintenance of Assessment. The County agrees to maintain and continue the C-PACE Lien on the Property for the benefit of Capital Provider until the C-PACE Loan, including all interest, fees, penalties, costs, and other sums due, is paid in full.

(g) Assignment. Capital Provider shall have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider, provided all of the following conditions are met:

(1) The assignment or transfer is made pursuant to the requirements of the Ordinance and Program Guide;

(2) The Program Administrator and Borrower are notified in writing of the assignment or transfer and provided the address where future Loan Payments should be mailed at least 30 days before the next Payment is due according to the Assessment Payment Schedule; and

(3) The assignee or transferee, by operation of the Assignment or otherwise, assumes Capital Provider's obligations under the Loan Documents. Upon written notice to the Program Administrator and Borrower of an assignment or transfer of the right to receive the Loan Payments that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under the Loan Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C-PACE Lien that does not meet all of these conditions is void.

(4) The County shall not be obligated to remit C-PACE Loan Payments to a new Capital Provider assuming the C-PACE Loan until a recorded copy of the Assignment has been provided to the County at the following address:

(h) Lien Priority and Enforcement. Pursuant to Act, Ordinance, and Program Guide:

(1) Delinquent Installments of the C-PACE Loan will incur interest and penalties as set forth in the Loan Documents.

(2) The C-PACE Lien, together with any penalties and interest thereon:

- (i) has the same priority status as a lien for County real estate taxes;
 - (ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the Land Records of Loudoun County, Virginia, until the financing secured by the C-PACE Lien and any penalties and interest are paid in full;
 - (iii) shall run with the land, and any portion of the C-PACE Lien that has not yet become due under the Loan Documents is not eliminated by foreclosure of: (i) a County property tax lien, or (ii) the lien for any past due portion of the C-PACE Loan.
 - (iv) In the event of a sale or transfer of the Property by Borrower, the obligation for the C-PACE Lien and Borrower's obligations under the Loan Documents will be transferred to the succeeding owner.
- (3) In the event of a default by Borrower for failing to make the Loan Payments called for by the Loan Documents and upon written request by the Capital Provider, the County will enforce the C-PACE Lien in the same manner as a property tax lien against real property may be enforced by a county in Virginia as set forth in Title 58.1, Chapters 32 and 39 of the Code of Virginia. Capital Provider agrees to cooperate with County in its enforcement of the C-PACE Lien by providing all necessary documents and information concerning the delinquent C-PACE Loan as requested by the County Attorney's Office.
- (4) In a suit to collect Delinquent Payments, the County will be entitled to recover the Delinquent Payments, penalties, and interest due, and the costs and expenses of collection, including attorney's fees, all as set forth in the Loan Documents.

(i) Borrower's Waiver of Certain Defenses; Confession of Judgment: By executing this Agreement, Borrower acknowledges and agrees as follows:

- (1) After the C-PACE Lien Certificate is recorded, Borrower waives the right to contest the Lien on the basis that the Project Improvements are not Eligible Improvements as such terms are defined herein and in the Ordinance;
- (2) Borrower waives all defenses, affirmative or otherwise, to a foreclosure action brought as a result of Borrower's default for failing to pay the Loan Payments due pursuant to the Loan Documents;
- (3) To the extent permitted by the Financing Agreement, Borrower waives all defenses to the imposition of personal liability for corporate officers as permitted under section 58.1-3965(F) of the Code of Virginia;

- (4) Borrower shall provide a confession of judgment if requested by the Capital Provider.

(j) Written Contract Required by the Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by § 15.2-968.3(A)(7) of the Act.

(k) Transfer of Project Improvements. Borrower agrees that all Project Improvements purchased, constructed, and/or installed through financing obtained pursuant to the C-PACE Program shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property.

(l) No Cost to County. No provision of this Agreement requires the County to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(m) Term of the Agreement. The term of this Agreement shall commence upon the Effective Date and shall be in full force and effect until the C-PACE Loan has been paid in full.

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Borrower, or any right or remedy of the Capital Provider or County, Borrower agrees to indemnify and hold harmless the Capital Provider and County, their directors, officers, employees, agents, subsidiaries, and affiliates (each, an "Indemnified Party"), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether created by statute or common law, including all costs and expenses, including attorneys' fees, arising from or associated with this C-PACE Loan transaction. This section shall survive the expiration of the Term of this Agreement.

Section 5 - Miscellaneous Provisions.

(a) Construction and Definitions. This Agreement is to be construed in accordance with and with reference to the Act, Ordinance, and Program Guide. Capitalized terms used herein shall have the same meanings ascribed to them in the Ordinance.

(b) Further Assurances. Borrower further covenants and agrees to do, execute, and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.

(c) Severability. If the C-PACE Act, the Ordinance, and/or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the County or Capital Provider, Borrower agrees to continue to make the Loan Payments required under the Loan Documents and agrees to execute any and all documentation to perfect and enforce the C-PACE Loan as required by the County or Capital Provider. The invalidity of any clause, provision, or section of this Agreement shall not affect any remaining

clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.

(d) 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.

(e) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the County:

[Address]

If to the Borrower:

[Address]

If to the Capital Provider:

[Address]

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the parties.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In any action, in equity or at law, with respect to the enforcement or interpretation of this Agreement, venue shall be in Loudoun County, Virginia.

(h) Successors and Assigns. This Agreement is binding upon and made for the benefit of Borrower, Capital Provider, and County and their respective successors and permitted assigns.

(i) 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.

(j) 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.

IN WITNESS WHEREOF, the County, Borrower, and Capital Provider have each caused this Agreement to be executed on the date(s) entered below:

COUNTY OF LOUDOUN, VIRGINIA

By: _____

Name/Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Name/Title: _____

BORROWER:

By: _____

Name/Title: _____

Date: _____

CAPITAL PROVIDER:

By: _____

Name/Title: _____

Date: _____

Exhibit A

Property Description

Exhibit B

Loan Terms and Assessment Payment Schedule