

Utah C-PACE Program Guidelines



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GOVERNOR'S OFFICE OF
ENERGY DEVELOPMENT

Advancing Utah's Energy Future

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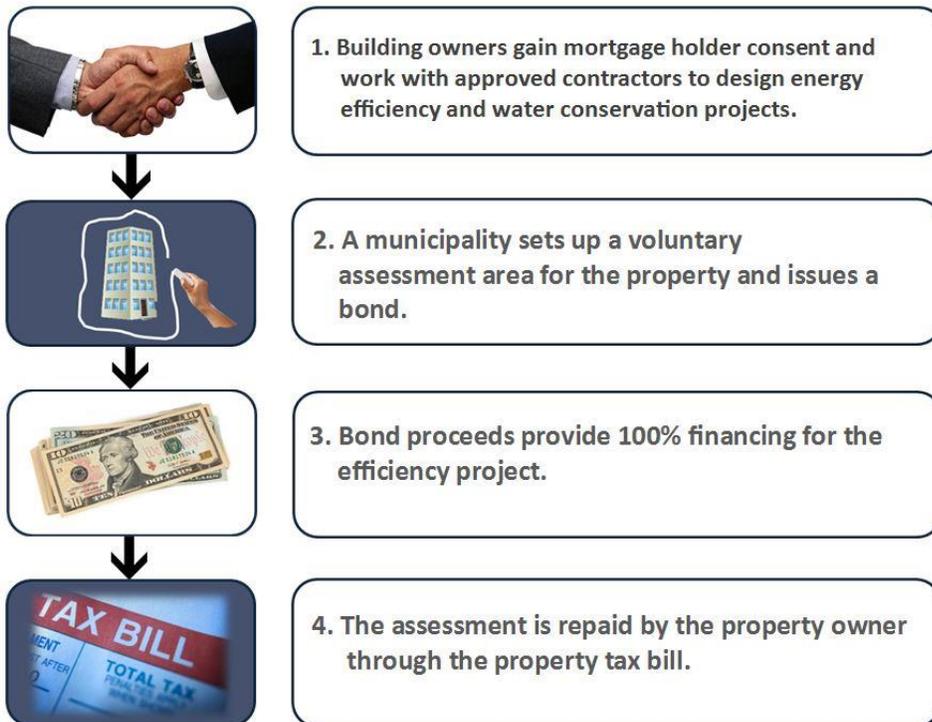
What is C-PACE?

Commercial Property Assessed Clean Energy, or C-PACE, is an effective way to finance energy efficiency, renewable energy, and water conservation projects for commercial buildings through a voluntary assessment on the property. C-PACE allows property owners to pay for efficiency improvements with zero upfront costs and terms up to 30 years.

Similar to a sewer assessment, capital provided under C-PACE is secured by a lien on the owner's property and paid back over time as an assessment. Like other benefit assessments, a C-PACE lien is senior to other obligations and secured by the property (except for property taxes, which are senior to the PACE assessment). The repayment obligation transfers automatically to the next owner if the property is sold and in the event of default, only the payments in arrears come due. This arrangement spreads the cost of clean energy improvements – such as energy efficient boilers, upgraded insulation, new windows, or solar installations – over the expected life of the measure. Because the payment is tied to the property tax bill, which is a secure payment stream, C-PACE projects are seen as low-risk loans.

Utah Senate Bill 221, *Assessment Area Act Amendments*, was passed during the 2013 legislative session. This legislation authorizes municipalities and counties to set up voluntary special assessment areas for energy efficiency upgrades or renewable energy systems and provides guidelines for C-PACE financing in Utah.

How does C-PACE work?



C-PACE Process Steps

1. Property owner completes the pre-application ([Appendix 1](#)) on the OED website.
2. Property owner completes the C-PACE application ([Appendix 2](#)) on the OED website.
3. If the property is located in a municipality that has not already opted-in to the statewide C-PACE program, OED coordinates with the municipality to opt-in ([Appendix 3](#)).
4. OED encourages property owners to complete the following project steps (*denotes a voluntary, but highly recommended step)
 - a. *Conduct a whole building energy analysis.
 - b. *Determine a general project scope.
 - c. *Review utility incentive programs.
 - d. Review project scope, gain mortgage holder consent, and verify:
 - i. There are no delinquent taxes, special assessments, or water sewer charges are on the property.
 - ii. There is no recorded notice of default, foreclosure, or delinquency on any trust deed or other lien on the property that has not been cured.
 - iii. There are no involuntary liens, including a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials.
 - iv. The financing will not exceed 30 years.
 - v. The conservation measures are permanently attached to the building.
 - e. Property owner selects a contractor from the approved vendor list. If the property owner's preferred contractor is not on the list of approved vendors, the vendor should contact OED to apply ([Appendix 4](#)).
 - f. Contractor designs an efficiency project with the approved vendor ensuring:
 - i. The efficiency measures are valid (see [Eligible Conservation Measures](#)).
 - ii. The expected payback for the efficiency measures does not exceed 30 years or the expected useful life of the improvements.
5. OED reviews the energy audit and project application to ensure statutory compliance.
6. Property owner coordinates with the municipality to designate a voluntary special assessment area.
7. Property owner arranges bond purchase through a private lender.
8. Municipality records the assessment and issues the bond.
9. Property owner coordinates with Trustee to draw down bond proceeds.
10. Vendor completes prescribed efficiency improvements.

11. OED performs installation verification, including review of signed certification from installer.
12. County bills property owner on tax bill.

Statewide Utah C-PACE Program

The statewide Utah C-PACE program is administered by the Utah Governor's Office of Energy Development (OED). Municipalities may opt-in to the program by completing the Utah C-PACE Municipal Agreement form ([Appendix 3](#)).

OED will provide standardized program forms, maintain an online approved vendor list, review or secure a third-party review of the applications including technical review of proposed energy/water conservation measures, and verify installation of projects. Municipalities will adopt a designation ordinance or resolution to designate a voluntary assessment area, levy the assessment, issue a municipal bond, collect installment payments, and release and discharge assessments.

Eligibility Requirements

Eligible Property Types

Properties eligible for C-PACE financing include:

- Commercial
- Mining
- Industrial
- Manufacturing
- Trade
- Professional
- Private/Public club
- Lodge
- Business
- Residential Housing (4+ Units)

Property Owner Eligibility

In order to utilize C-PACE financing, the property owner must:

1. Obtain consent from each person or institution holding a lien on the property
2. Ensure the energy conservation measures will be permanently affixed to the real property
3. Certify there are no delinquent taxes, special assessments, or water sewer charges on the property
4. Certify there is no recorded notice of default, foreclosure, or delinquency on any trust deed or other lien on the property that has not been cured
5. Certify there are no involuntary liens, including a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property
6. Certify the C-PACE financing will not exceed 30 years
7. Explain why a loan exceeding 10 years would be prudent if the useful life of the energy conservation measure does not exceed 10 years

Eligible Conservation Measures

As outlined in Utah Code §§11-42-102(13), energy efficiency upgrades, including measures to reduce the consumption of water through conservation and efficient use of water must be permanently affixed to the property and be designed to reduce energy or water consumption. Likewise, renewable energy systems must be permanently attached to the property.

Common eligible Energy Conservation Measures (ECM) and water conservation measures:

- Insulation in:
 - Wall
 - Roof
 - Floor
 - Ceiling
- Heating and cooling distribution system
- Windows/doors including:
 - Storm window
 - Storm door
 - Multiglazed window or door
 - Heat-absorbing window or door
 - Heat reflective glazed and coated window and door
 - Window or door with reduced glass area
 - Other window and door modifications
- Automatic energy control system
- Heating, ventilation, or air conditioning distribution system
- Caulk or weatherstripping
- Energy efficient light fixtures
- Energy recovery system
- Daylighting system
- Measures to reduce the consumption of water, through conservation or more efficient use of water including:
 - Low-flow toilets and showerheads
 - Timer or timing systems for hot water heater
 - Rain catchment systems
- Modified installed or remodeled fixture that is approved as a utility cost-saving measure by the governing body of a local entity

Common eligible renewable systems:

- Renewable energy system
- Photovoltaic system
- Solar thermal system
- Wind system
- Geothermal system

- Generation system
- Direct-use system
- Ground source heat pump system
- Microhydro system
- Renewable sources approved by the governing body of a local entity

Audits

The statewide C-PACE program does not statutorily require a water or energy audit; however, OED strongly recommends all buildings applying for C-PACE financing undergo an ASHRAE Level II Audit or the equivalent, a water audit, or a feasibility study for all renewable projects. Individual lenders may require a specific audit as part of their underwriting criteria.

Energy and Water Savings

While the statewide C-PACE program does not require a specific savings to investment ratio (SIR), property owners should carefully consider the advantages of financing projects with an SIR greater than or equal to 1. Similarly, there are no programmatic requirements for projects to generate a set percentage of energy or water savings. Property owners should work closely with their approved contractor and lender to ensure the proposed efficiencies and financing will provide the greatest long-term benefit.

Authorized Service Providers

Pursuant to Utah Code §§11-42-301(9)), all C-PACE energy efficiency, renewable energy, and water conservation projects must be completed by a service provider authorized by the municipality designating the voluntary special assessment. OED will compile a list of authorized service providers who meet the basic requirements to operate a business in the State of Utah. Municipalities may elect to adopt the authorized service provider list provided by OED.

Interested service providers may apply by completing the Authorized Vendor Application ([Appendix 4](#)). Applications will be reviewed weekly. Vendors will be required to submit the following information:

Contact information:

- | | |
|------------------------|-----------|
| • Company Name | • Website |
| • Primary Contact name | • Address |
| • Email | • Phone |

Company Profile:

- | | |
|---------------------------|--|
| • Description of business | • Average number of energy efficiency, renewable energy, and |
| • Years in business | |

water conservation projects completed each year

- C-PACE projects completed

Contractors

- Utah DOPL License Number
- Utah DOPL Classification

Additional Service Providers

- Organization designation
- License Information

- Conservation measures offered

- Bond status
- Insurance status

Eligible Expenses

C-PACE financing may cover costs associated with the energy/water audits or renewable feasibility studies, engineering and design costs, and construction and installation.

C-PACE Benefits

Property Owners

- Addresses traditional barriers to making capital improvements through 100% up front financing
- Captures capital previously spent on utilities to pay for the improvements
- Positive net operating cost
- Increased property value
- Lower energy costs
- Long term pay back making projects cash flow positive
- Assessment stays with the building upon sale
- Up to 30 year financing

Mortgage Holders

- Appreciates the property value
- Assessment is secured by repayment on the property tax bill, a secure payment stream.
- Positive cash flow increases net operating income for property since less is being spent on utility bills
- Projects designed so dollars saved on utility costs more than pay for the assessment payments
- Property is more attractive to future buyers and potential tenants
- Under some lease structures, assessment can be passed to tenants

Municipalities

- Creates jobs and increase economic activity
- Reduces energy and water use to aid municipalities in their overall efforts to decrease consumption
- Improves the quality of the community's commercial and industrial building stock

Lenders

The statewide Utah C-PACE program encourages an open market for C-PACE financing. Property owners may work with the lender of their choice. A list of institutions that have expressed an interest in providing C-PACE financing will be available on OED's C-PACE website in the near future.

Appendix 1

Utah C-PACE Pre-Application

This form will help property owners determine whether their property is eligible for C-PACE financing.

Eligibility

Is the owner aware he/she must obtain consent from each person or institution holding a lien or mortgage on the property in order to receive C-PACE financing?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the proposed energy or water conservation measures be permanently affixed to the real property?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there any delinquent taxes, special assessments, or water sewer charges on the property?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is there a recorded notice of default, foreclosure, or delinquency on any trust deed or other lien on the property that has not been cured?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there any involuntary liens, including a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the C-PACE loan exceed 30 years?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the term of the C-PACE loan exceeds 10 years, will the loan term exceed the reasonable useful life of the improvement(s) (unless it is in the best interests of the relevant local entity to pay installments for more than 10 years)?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Property Location

Property Name: _____
City: _____ County: _____
Property Address: _____

Property Type

<input type="checkbox"/> Office	<input type="checkbox"/> Industrial	<input type="checkbox"/> Multi-Family/Apartment (> 4 Rental Units)
<input type="checkbox"/> Warehouse	<input type="checkbox"/> Hospital/Lab	<input type="checkbox"/> Hotel
<input type="checkbox"/> Non-Profit	<input type="checkbox"/> Education	<input type="checkbox"/> Retail
<input type="checkbox"/> Agriculture	<input type="checkbox"/> Other: _____	
Gross Square Footage: _____		

Please submit pre-application and/or questions to: utahcpace@utah.gov

Appendix 2

Utah C-PACE Application

Please complete the entire application form.

Contact Information

Name: _____

Email: _____

Phone: _____

I am a (please select one):

Property Owner Building Manager Municipality

Investor/Lender Contractor/Auditor/Project Developer

Mortgage Holder Other: _____

Building Owner Information

Building Owner: _____

Entity: _____

Building Owner Contact: _____

Email: _____ Phone: _____

Property Legal Description: _____

Project Type

Energy Efficiency Upgrade Renewable Energy System Upgrade or Installation

Water Conservation Other: _____

Conservation Projects

Describe each energy efficiency, water conservation, and/or renewable energy system project. Include estimated costs and projected utility savings.

Energy and/or Water Conservation Project	Estimated Cost	Projected Utility Savings
Total:		
Estimated C-PACE Financing for Project(s):		

Tax Credits

Do you plan to apply for any state or federal tax credits in connection with C-PACE financing?

Yes No

If yes, please describe:

Energy Audit

Please attach all audits, feasibility studies, incentive information, and other relevant project documents to this application.

Type of energy audit last conducted on the building: _____

Date of audit: _____

If you are installing or upgrading a renewable energy system(s), have you conducted a feasibility study? Yes No

Date of feasibility study: _____

Contractor Contact

Contractor Company: _____

Name: _____

Email: _____ Phone: _____

Building Financials

1. Amount of property taxes and other municipal assessments (ex., sewer assessment) paid on the property in the most recent year: _____

Are payments current? Yes No

Are all other municipal assessment payments current? Yes No

Do you have clear title to the property with no encumbrances? Yes No

If no, please describe encumbrances on the property:

2. Are there any outstanding liens (including tax liens) or notices of default on the property?

Yes No

If so, describe who holds the liens or who issued the notices of default:

3. Is/are there a current mortgage(s) on the property? Yes No

If yes, describe all mortgage holder(s):

Are there payment penalties? Yes No

Principal outstanding: _____

Are mortgage payments current? Yes No

Terms and Conditions

The State of Utah, Governor's Office of Energy Development ("OED"), will facilitate a statewide Commercial Property Assessed Clean Energy (C-PACE) program. OED will coordinate certain services to allow commercial property owners ("Owner") to utilize C-PACE financing for water conservation, energy efficiency, and renewable energy projects. The following standard terms and conditions apply to OED's program.

1. **Confidentiality.** OED is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to 901 ("GRAMA") Accordingly, certain records within possession or control, including without limitation, these standard terms and conditions, may be subject to public disclosure. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided by Owner to OED that Owner believes should be protected from public disclosure, must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such a claim.
2. **No Endorsement:** Reference herein to any specific commercial products, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the State of Utah. The views and opinions expressed herein do not necessarily state or reflect those of the State of Utah, and shall not be used for advertising or product endorsement purposes.
3. **Disclaimer of Liability:** OED is a governmental entity defined by the Utah Governmental Immunity Act, Utah Code §63G-7-101, et seq. and does not waive any defenses contained therein. With respect to documents and information available under OED's C-PACE program, neither the State of Utah nor any of its employees makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. OED will not be responsible for any damages suffered by Owner, to include loss of data collected under Paragraph 6.
4. **No Warranties and Representations:** OED makes no representations, covenants, or warranties under this agreement, other than the duties of Program Administrator, as outlined the C-PACE Program Guidebook. OED does not guarantee funding for the project or increased property value. Owner must abide by the terms of the bond agreement and the conditions set forth by the entity issuing the C-PACE bond. OED is not responsible for any obligations under the bond agreement. OED is not responsible for any construction defects or negligence by a contractor or worker on the authorized list.
5. **Assumption of the Risk:** Owner knowing the risks described above, and in consideration of being permitted to participate in the C-PACE program, Owner agrees to, and on behalf of its successors or assigns, to assume all the risks and responsibilities surrounding its participation in the C-PACE program. To the maximum extent permitted by law, Owner releases, indemnifies, and covenants not to sue OED from and against any present or future claim, loss or liability for

injury/damages to person or property which owner may suffer, or for which owner may be liable to any other person, during Owner's participation in the C-PACE program. This agreement shall be governed by the laws of the State of Utah, which shall be the forum for any lawsuits filed under, or incident to, this agreement or to the C-PACE program.

6. **Consent to Collect and Use Data:** Property owner hereby consents to OED collection of, the use of, and reuse of data or information gathered from the C-PACE program for any purpose including but not limited to use in print, on the internet, and all other forms of media. Owner also hereby releases OED and its agents and employees from all claims, demands, and liabilities whatsoever in connection with the above.
7. **No Agency:** Nothing contained in these standard terms and conditions shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. Owner has no authority to act as agent for, or on behalf of, OED, or to represent OED, or bind OED in any manner.
8. **Amendments:** These standard terms and conditions may only be amended by the written agreement of OED, which amendment will be attached to these standard terms and conditions. Automatic renewals will not apply to these standard terms and conditions.
9. **Conflict of Interest:** Owner represents that none of its officers or employees are officers or employees of OED or of the State of Utah, unless disclosure has been made to OED.
10. **Termination:** These standard terms and conditions may be terminated by OED at any time upon OED providing Owner with 10 days' written notice of termination. Such notice may be provided to Owner by OED at any time and for any reason, with or without cause.

Building Owner

OED Staff

Date

Date

Please submit application and/or questions to: utahcpaace@utah.gov

Appendix 3

Utah C-PACE Municipality Agreement

This agreement (“**Agreement**”) is entered into and effective as of the _____ day of _____, 20 ____, by and between _____, a political subdivision of the State of Utah (“**Municipality**”) and the Utah Governor’s Office of Energy Development, a body politic and corporate of the State of Utah (“**OED**”).

1. Commercial Property Assessed Clean Energy, or C-PACE, is a mechanism allowable under Utah Code §§ 11-42-209 for financing energy efficiency, renewable energy, and water conservation projects for commercial buildings through a voluntary assessment on the property tax bill.
2. OED will facilitate a statewide C-PACE program to streamline statutory and programmatic requirements. A political subdivision may voluntarily opt-in to the statewide program.

Agreement

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and undertakings herein set forth, the parties agree as follows,

1. The above recitals are hereby included and incorporated as a part of this agreement.
2. The Municipality agrees to opt-in and use the OED C-PACE Program.
3. In accordance with Utah Code §§ 11-42-301 (9)(b) the Municipality must maintain and use an authorized vendor list. The parties agree to use the authorized vendor list, which meets the criteria set forth in Utah Code §§ 11-42-301 (9)(b), maintained and administered by OED.

OED shall provide the following:

1. Provide standardized program forms including application, lender consent, and municipality opt-in agreement.
2. Maintain an online authorized vendor list.
3. Review or secure a third-party review of applications including technical review of proposed energy/water conservation measures.
4. Verify installation of projects.

MUNICIPALITY shall provide the following:

1. Adopt a designation ordinance or resolution to designate a voluntary assessment area in accordance with Utah Code §§ 11-42-201 to 209.
2. Levy an assessment in accordance with Utah Code §§ 11-42-401 to 416.

3. Issue a municipal bond in accordance with the Municipality's bonding authority and statute.
4. Collect installment payments in accordance with Utah Code §§ 11-42-401-416.
5. Enforce bond agreement in accordance with terms of the bond.
6. Release and discharge assessment in accordance with Utah Code §§ 11-42-501 to 506.

STANDARD TERMS

1. **Confidentiality.** OED is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to 901 ("GRAMA") Accordingly, certain records within possession or control, including without limitation, the Agreement, may be subject to public disclosure. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided to OED believed to be protected from disclosure, must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such a claim.

2. **Indemnification.**

2.1 Indemnification by OED. OED is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G -7-101 to 904, as amended (the "Act"). Nothing in the Agreement shall be construed as a waiver by OED of any protections, rights, or defenses applicable to OED under the Act, including without limitation, the provisions of section 63G-7-604 regarding limitation of judgments. It is not the intent of OED to incur by contract any liability for the operations, acts, or omissions of the other Party or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of OED contained in the Agreement are subject to the Act, are limited to the amounts established in section 63G-7-604 of the Act, and are further limited only to claims that arise from the negligent acts or omissions of OED.

2.2 Indemnification by Municipality. Municipality shall indemnify, defend, and hold harmless OED its directors, officers, agents and employees against any actions, suits, proceedings, liabilities and damages that may result from the negligent acts or omissions of Municipality, its officers, agents or employees in connection with this Agreement.

2.3 OED Not Liable. OED is not liable for the debt or the responsibility of the Municipality to repay the bond. Further, OED is not liable if the approved vendor does not perform its duties or fails to perform its duties to the requisite standard of care, as outlined in the project contract.

3. **Relationship of Parties.** In assuming and performing the obligations of this Agreement, Municipality and OED are each acting as independent parties and neither shall be

considered or represent itself as a joint venturer, partner, agent or employee of the other. Neither party shall use the name or any trademark of the other party in any advertising, sales promotion or other publicity matter without the prior written approval of the other party.

4. Termination. This Agreement may be terminated by either party at any time and from time to time, by giving written notice thereof to the other party. Such termination shall be effective thirty (30) days after receipt of such notice.

5. Miscellaneous.

5.1 Assignment. Neither party shall assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due under this Agreement, without the prior written consent of the other party.

5.2 Entire Agreement. This Agreement, with its attachments, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any other written or oral understanding of the parties. This Agreement may not be modified except by written instrument executed by both parties.

5.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

5.4 Governing Law and Disputes. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah, without application of any principles of choice of laws. Disputes that cannot be resolved by Municipality and OED shall be determined by a court of competent jurisdiction in the State of Utah, in the County of Salt Lake.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first written above.

By: _____
Municipality Representative

OED Staff

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please submit application and/or questions to: utahcpace@utah.gov

Appendix 4

Utah C-PACE Authorized Service Provider Application

Commercial Property Assessed Clean Energy, or C-PACE, is a mechanism allowable under Utah Code §§11-42-209 for financing energy efficiency, renewable energy, and water conservation projects for commercial buildings through a voluntary assessment on the property tax bill. Per U.C.A. §11-42-301 (9)(b) and the Municipality Agreement, OED will maintain a list of authorized service providers for the completion of C-PACE projects.

Authorized service providers must provide an active Utah Division of Occupational and Professional Licensing license number, all relevant classifications, and certify they are bonded and hold the state minimum for liability insurance. Other authorized service providers including design groups, distributors, engineers, and architects will also be required to provide relevant business license information.

Company Contact Information

Company Name: _____
Contact Name: _____
Email: _____ Phone: _____ Website: _____
Address: _____
City: _____ State: _____ Zip Code: _____

Company Profile

Please provide a brief description of your company including ownership, volume of business, number of employees, and the services you provide.

How many years have you been in business? _____

On average, how many energy efficiency, renewable energy, or water conservation projects do you complete a year?

How many C-PACE projects have you completed? Please indicate the year the project took place and provide the city and state where the work was completed.

What building energy conservation measures does your company offer or specialize in?

- Lighting
- HVAC
- Building Envelope
- Controls
- Building/Energy Management Systems
- Commissioning
- Solar PV
- Combined Heat and Power
- Motors and Drives
- Renewable Energy
- Geothermal
- Wind
- Water Conservation
- Compressed Air
- Other: _____

Are you a contractor licensed with the Division of Occupational and Professional Licensing?

Yes No

If yes, please complete the License and Classification section. If no, please proceed to the Service Provider Information.

License and Classification

Utah DOPL License Number: _____

Utah DOPL Classification(s) (list all that apply): _____

Are you bonded? Yes No

Do you hold active liability insurance? Yes No

Service Provider Information

Design Group

Distributor

Engineer

Architect

Other: _____

Please provide the pertinent license information for your organization: _____

Terms and Conditions

The State of Utah, Governor's Office of Energy Development ("OED"), will facilitate a statewide Commercial Property Assessed Clean Energy (C-PACE) program. OED will coordinate certain services to allow commercial property owners to utilize C-PACE financing for water conservation, energy efficiency, and renewable energy projects. As part of this program, OED will provide a list of authorized vendors ("Vendor") on its C-PACE website. The following standard terms and conditions apply to OED's program.

- 1. Confidentiality:** OED is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to 901 ("GRAMA") Accordingly, certain records within possession or control, including without limitation, these standard terms and conditions, may be subject to public disclosure. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided by Vendor to OED that Vendor believes should be protected from public disclosure, must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such a claim.
- 2. No Endorsement:** Reference herein to any specific commercial products, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the State of Utah. The views and opinions of authors expressed herein do not necessarily state or reflect those of the State of Utah, and shall not be used for advertising or product endorsement purposes.
- 3. Disclaimer of Liability:** OED is a governmental entity defined by the Utah Governmental Immunity Act, Utah Code §63G-7-101, et seq. and does not waive any defenses contained therein. With respect to documents and information available under OED's C-PACE program, neither the State of Utah nor any of its employees makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. OED will not be responsible for any damages suffered by Vendor, to include loss of data collected under Paragraph 6.
- 4. No Warranties and Representations:** OED makes no representations, covenants, or warranties under this agreement, other than the duties of Program Administrator, as outlined in the C-PACE Program Guidebook. OED does not guarantee that Vendor will be selected by a property owner or municipality to be used in the program. This program is voluntary and no guarantees or work or government contract or funding is made by OED to vendor. OED is not responsible for any construction defects or negligence by the Vendor.
- 5. Assumption of the Risk:** Vendor knowing the risks described above, and in consideration of being permitted to participate in the Program, Vendor agrees to, and on behalf of its successors or assigns, to assume all the risks and responsibilities surrounding its participation in the C-PACE program. To the maximum extent permitted by law, Vendor releases, indemnifies, and covenants not to sue OED from and against any present or future claim, loss or liability for injury/damages to person or property which Vendor may suffer, or for which owner may be liable to any other person, during Vendor's participation in the C-PACE program. This agreement shall be governed by the laws of the State of Utah, which shall be the forum for any lawsuits filed under or incident to this agreement or to the C-PACE program.

6. **Consent to Collect and Use Data:** Vendor hereby consents to OED collection of, the use of, and reuse of data or information gathered from the C-PACE program for any purpose including but not limited to use in print, on the internet, and all other forms of media. Vendor also hereby release OED and its agents and employees from all claims, demands, and liabilities whatsoever in connection with the above.
7. **No Agency:** Nothing contained in these standard terms and conditions shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. Vendor has no authority to act as agent for, or on behalf of, OED, or to represent OED, or bind OED in any manner.
8. **Amendments:** These standard terms and conditions may only be amended by the written agreement of OED, which amendment will be attached to these standard terms and conditions. Automatic renewals will not apply to these standard terms and conditions.
9. **Conflict of Interest:** Vendor represents that none of its officers or employees are officers or employees of OED or of the State of Utah, unless disclosure has been made to OED.
10. **Termination:** These standard terms and conditions may be terminated by OED at any time upon OED providing Owner with 10 days' written notice of termination. Such notice may be provided to Owner by OED at any time and for any reason, with or without cause.

I have carefully read the below standard terms and conditions. No representations, statements, or inducements, oral or written, apart from the foregoing written statement have been made.

Service Provider

OED Staff

Date

Date

Please submit application and/or questions to: utahcpa@utah.gov