

# Montana Commercial Property Assessed Capital Enhancements Program Guidelines

December 2021

Montana Facility Finance Authority  
2401 Colonial Drive  
Helena, MT 59620



## About the Authority

The Montana Facility Finance Authority (“MFFA” or the “Authority”) provides not-for-profit health care providers with access to low-cost capital. The Authority provides tax-exempt bond financing, low-interest loans and limited planning grants for non-for-profit healthcare organizations and small value-added manufacturers with projects of less than \$10 million.

The 2021 legislative session authorized the Authority to become the state-wide administrator of the Commercial Property Assessed Capital Enhancements or “C-PACE” program.

Under the PACE Act, the Authority is tasked as the program administrator in charge of establishment and operation of a statewide program to enable the creation of C-PACE districts and support property owners, lenders, and local governments as they use C-PACE financing. The Authority’s work on the MTPACE program will be funded by transaction fees paid by the parties or other sources of revenue. The Authority will not receive compensation or reimbursement from local governments.

The Authority is an enterprise fund administratively connected to the Montana Department of Commerce.

## Mission

Enhance Montana healthcare and community capabilities through access to cost-effective capital financing and development services.

## Values

The Authority holds the following values as important to the achievement of its mission. These values guide our internal conduct and relationships with our partners:

- Accessibility
- Accountability
- Community
- Effectiveness
- Relationships
- Self-sustaining
- Nimble

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## Program History

In 2021, Governor Greg Gianforte signed into law the Commercial Property-Assessed Capital Enhancements Act of Montana, which authorized the creation of a C-PACE program in Montana. MCA 90-4-13 allows for the establishment of a commercial Property-Assessed Capital Enhancements program (“MTPACE”) to be administered by the Montana Facility Finance Authority. MTPACE is effective beginning January 1, 2022.

The Authority would like to thank all working group members who provided insight and expertise to help mold the MTPACE program guidelines. Special thanks goes out to Northern Plains Resource Council, PACENation, and the C-PACE Alliance for being guiding forces through this process.

## Definitions

**Applicant** – Any property owner or their authorized agent who submits an application to the Authority with the intent to utilize MTPACE Financing to fund a C-PACE Project.

**Application Fee** – This fee is due at the time the Full Application is submitted for review by the Authority.

**Cost Effectiveness** – The total cost of financing will be exceeded by the projected monetary savings to the Record Owner over the life of the assessment as a result of the C-PACE Project. The project must be deemed as cost effective by the professional conducting the Energy Assessment and independent reviewer to move forward. The cost effectiveness examines the value of energy and water utility bill savings, operational savings streams, and tax benefits with respect to the value of the costs of installing the ECM(s).

**C-PACE** – The acronym for Commercial Property Assessed Capital Enhancements.

**C-PACE District** – A district created by a local government to allow Record Owners C-PACE financing.

**C-PACE Financing** – A C-PACE Financing Agreement made by a C-PACE Lender to a Record Owner for a C-PACE Project.

**C-PACE Financing Agreement** – A written agreement between a Record Owner, a C-PACE Lender, and the Local Government where the C-PACE Project is located that is recorded in the appropriate jurisdiction’s property records and sets forth the terms of the C-PACE Financing.

**C-PACE Lender** – Any financial institution that meets the participation requirements set forth in the Eligible Lenders portion of the Guidelines and that makes a C-PACE Financing.

C-PACE Project – One or more Energy Conservation Measures installed on real property that meet the requirements set forth in the Program Guidelines.

C-PACE Record Owner – The Record Owner who completes a Full Application and receives a Notice of MTPACE Approval to receive the proceeds of a C-PACE Financing to fund a C-PACE Project.

Direct Costs – All ECM direct costs necessary to complete the installation of a C-PACE Project, such as the installation/construction contract amount (materials and labor), and any required ancillary cost incurred in order to complete the installation of an ECM. Ongoing maintenance and operational costs may also be included.

Electric Vehicle Charging System – The installation or upgrade of electrical transformers, wiring, outlets, or charging stations to charge a motor vehicle that is fully or partially powered by electricity.

Eligible Property – Any property located in a C-PACE district that is utilized for general commercial purposes, such as retail, industrial, office, non-profit, agricultural, and hospitality uses, as well as certain multifamily properties with four or more units.

Energy Assessment – An assessment of the energy efficiency, water conservation, or renewable energy measures proposed for the C-PACE Project conducted by the project contractor or professional engineer.

Energy Conservation Measure (ECM) – An Energy Efficiency Improvement, Water Efficiency Improvement, Renewable Energy Improvement, or Electric Vehicle Charging System installed at an Eligible Property. The types of projects vary, but are usually designed to reduce utility costs. Water, electricity, and gas are the main three utility costs for industrial and commercial enterprises. The aim of an ECM should be to generate on-site energy or achieve a savings by reducing the amount of energy or water used by a particular process, technology, or facility.

Energy Efficiency Improvement – An improvement to a commercial or industrial premises (subject to Eligible Property guidelines), that reduces the usage of energy, or increases the efficiency of energy usage at the premises. This is referred to as “Qualified Improvements” in the Program Plan.

Full Application – The application to participate in MTPACE C-PACE.

Independent Reviewer – A review performed by a qualified engineer who has no financial interest in the project. Their review verifies the feasibility of the project design and expected cost effectiveness, and verifies that the project has been successfully completed.

Local Government – A Montana county, city, or town that has voluntarily created a C-PACE District.

MFFA – The acronym for Montana Facility Finance Authority, the Program Administrators of the MTPACE program, known in this document as the “Authority.”

Mortgage Lender Consent – The written consent of the existing holder(s) of a mortgage or other real property lien on the Eligible Property of an Applicant, which must be obtained by an Applicant prior to closing on a C-PACE Financing.

MTPACE – The statewide C-PACE program administered by the Authority.

Notice of MTPACE Approval – This is a notice provided to the Applicant by the Authority that signifies that the Full Application is complete and approved. Following receipt of this notice, the Applicant may close their C-PACE Financing.

Pre-Application – The initial application completed by a Record Owner by which the Authority can determine whether the proposed project is located on an Eligible Property and that the Applicant is aware of the program requirements. Approval of a Pre-Application is a requirement prior to the Full Application step.

Program Fee – A one-time administration processing and Program Fee paid to the Authority at or prior to the C-PACE Financing closing date.

Program Guidelines – This document sets forth the C-PACE guidelines and processes for which Applicants seeking to complete a MTPACE Project may be approved to utilize C-PACE Financing.

Record Owner – As defined in statute at MCA 90-40-1302(10)

Renewable Energy Improvement – A building or site improvement that generates renewable energy available for use by building or facility occupants.

Renewable Energy Feasibility Study – A study that provides technology and financing recommendations for the installation of a Renewable Energy Improvement. The feasibility study must be performed by a professional engineer and reviewed by an independent reviewer with detailed knowledge of the renewable energy improvements.

Water Efficiency Improvement – An improvement to an Eligible Property that reduces the usage of water or increases the efficiency of water usage at the premises.

## Benefits of C-PACE Financing

Authorized under the C-PACE Act enacted in 2021, MTPACE is an innovative financing program that enables private sector owners of commercial, industrial, non-profit, agricultural, and multi-family properties with four or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits.

C-PACE loans provide up to 100% financing of all eligible project costs, with little or no up-front out-of-pocket cost to the Record Owner.

Loans made under the MTPACE Program will be secured by assessments on the property that are voluntarily imposed by the Record Owner. Assessments may be amortized over the projected life of the improvements. The annual utility cost savings derived from improvements financed with C-PACE loans are expected to match or exceed the amount of the annual assessment payments. In turn, these improvements are able to generate positive cash flow upon installation because the debt service will be no greater than the savings.

PACE assessments are tied to the property and follow title from one Record Owner to the next. Each Record Owner is responsible only for payment of the assessments accruing during its period of ownership. When the property is sold, the payment obligation for the remaining balance of the assessment is transferred automatically to the next Record Owner. As a result, the program will help Record Owners overcome market barriers which often discourage investment in energy efficiency and water conservation improvements.

The State of Montana, via the Montana Facility Finance Authority acting as Program Administrator, is establishing the MTPACE Program to encourage private sector investment in energy efficiency and water conservation. The MTPACE program will be offered to Record Owners on a strictly voluntary basis; loans will be privately financed.

## Program Requirements

Commercial properties must be located in a Montana city, county, or town that has entered into, or will enter into, a C-PACE District.

Qualifying businesses must also meet the following criteria:

- No “mechanics” or similar liens against the property
- Current on all taxes
- Current on mortgage payment(s)
- Not involved in any bankruptcy proceedings

## Eligible Properties & Owners

MTPACE is a voluntary program. All private sector owners of Eligible Properties located within a C-PACE District may participate in PACE Financing. “Eligible Properties” include commercial, industrial, non-profit, commercial condominiums, and multi-family residential properties with four or more dwelling units.

### **Eligible Property Location**

To be eligible, the property must be (or must be eligible to be placed) on the property tax rolls of a county or municipality within a C-PACE district and have a property tax identification number.

### **Ineligible Property Types**

Residential single family (1 – 3 units), residential condominiums, property owned by a local, state, or federal government, as well as property that is owned by a homeowner’s association or by a condominium association is not eligible.

### **Multiple Parcel IDs**

Buildings with multiple Parcel ID/Parcel Number/tax keys require additional documentation and underwriting. For C-PACE Projects that encompass multiple Parcel IDs/tax keys, the Assessment will include 1) a description of the method of spreading the Annual Installment between the parcels; 2) a list of lots, blocks, tracts, and parcels of land in the C-PACE Area; and 3) the amount assessed on each parcel. However, the Authority reserves the right to deny buildings with multiple Parcel ID/tax keys if any one Parcel ID/tax key cannot support a pro-rata portion the C-PACE Project.

## **Types of C-PACE Projects**

### **Retrofit Improvements**

The existing conditions of a building shall be used to establish the baseline level of energy and water usage against which the performance of the ECMs will be measured. Existing conditions may be determined based on nameplate efficiency ratings of currently installed equipment. Alternatively, the energy engineer may use modeled energy performance of the building or other professionally accepted methods of establishing energy and water efficiency performance of the existing building.

### **New Construction Projects**

C-PACE financing is available for the construction of new buildings, as well as the substantial (gut) renovation OR adaptive reuse of vacant buildings. New construction projects, unlike existing-building retrofits, do not benefit from a history of pre-improvement energy consumption data from which baseline energy consumption can be formulated. Without the benefit of this baseline building performance data, additional Energy Assessment requirements are necessary.

New construction projects are required to meet the State of Montana building code and exceed the code in some measurable manner. The baseline for new construction projects is the minimum level of equipment efficiency required by the current applicable building energy code or applicable ASHRAE (American Society of Heating, Refrigerating, and Air-Conditioning Engineers) standard. For any new construction project that follows the performance or prescriptive path, the Applicant must demonstrate through the Energy Assessment that the C-PACE project exceeds the applicable IECC (International Energy Conservation Code) or



equivalent ASHRAE standard established in the State of Montana building code or the new construction baseline set forth below.

For the purposes of determining the new construction baseline for the energy savings calculations prepared in the Energy Assessment, the applicant may rely on the corresponding ASHRAE standard.

#### Adaptive Reuse and Vacant Building Baseline:

If the C-PACE Project requires substantial renovation or adaptive reuse of a vacant or underutilized building at project inception as determined by the Authority, the baseline for the purposes of establishing energy savings of proposed Energy Conservation Measures can be set at the level of existing equipment and building conditions.

With the exception of the provision of historic utility bills, the Energy Assessment for this project type should include all other component requirements for existing buildings as outlined above. Energy savings for adaptive reuse and vacant buildings may be established using the appropriate energy assessment methodology determined by the qualified energy engineer as set forth above, provided that the existing equipment will serve the same function as the end result of the project.

#### **Retroactive Projects**

Completed installations of eligible Energy Conservation Measures are eligible for retroactive C-PACE Financing. Retroactive C-PACE Financings are C-PACE Financings that close financing after the Applicant completes the installation of an ECM(s). New construction projects which begin with a short-term construction phase financed by a construction loan, followed by long-term permanent loan that refinances the construction loan, may be reviewed as retroactive C-PACE Financings if the Record Owner chooses to access C-PACE Financing after stabilization of the property. Record Owners of new building projects that access C-PACE Financing earlier in the construction or conversion process may be reviewed under the guidelines for new construction.

Applicants with retroactive C-PACE Projects may apply to MTPACE to be approved for C-PACE Financing. Retroactive C-PACE Projects are subject to the following additional requirements:

- All such retroactive C-PACE Financings must occur within thirty-six months of the time elapsed between the later of the completion of the installation or the certificate of occupancy for the Eligible Property and application of the C-PACE Financing, unless otherwise approved by the Authority.
- For any such retroactive C-PACE Project, the term of the C-PACE Financing will be reduced to account for any of the ECM's life that has elapsed between the time of installation and the close of a C-PACE Financing. For example, if a C-PACE Financing is funded one year after the later of either the installation of the ECM(s) or certificate of

occupancy, the eligible term of the financing will be reduced by one year.

#### Required Documentation for Retroactive Financing:

Verification is required to establish prior conditions (baseline) and describe the new ECM installed in any such retroactive C-PACE Project. The Energy Assessment for a retroactive C-PACE Project shall include additional documentation that provides evidence of installation of the ECM(s) that are the subject of the C-PACE Project, as follows:

- Completion Date for the ECM(s) that are subject to the C-PACE Project
- Make and model of equipment replaced. Describe the baseline.
- Documentation that provides evidence of equipment installed prior to replacement
- Make and model of ECM(s) that are the subject of the retroactive C-PACE Project.
- Documentation that provides evidence of installation of new ECM(s)

### **Renewable Energy Improvements**

For all C-PACE Projects that include a Renewable Energy Improvement, the Record Owner must submit a Renewable Energy Feasibility Study. In addition to the information required for all energy assessments, the Renewable Energy Feasibility Study, at a minimum, should address the following:

- Site ambient conditions
- Location for the Renewable Energy Improvement
- Building characteristics
- Utility consumption profile of the site, including the site's historic energy use and cost
- Description of the proposed Renewable Energy Improvement
- Projected energy production
- Projected energy and financial cost savings to be generated by the Renewable Energy Improvement, including assumptions affecting the cost savings:
  - Weighted cost of energy saved and generated by the project
  - Cost savings to be realized from time-of-use and demand charge reductions
  - Utility tariff to be applied to the site and/or system following installation
  - Utility escalation rate assumptions
  - Tax benefits and other incentives
  - Expected Useful Life of the Renewable Energy Improvement
  - Maintenance expenses
- Assessment of total project capital costs
- Applicable utility tariffs and type of interconnection (e.g., net metering)
- Appropriate requirements for system monitoring to maintain optimized performance

At its sole discretion, the Authority may waive one or more required components of the Renewable Energy Feasibility Study.

The energy generation baseline for all Renewable Energy Improvements is assumed to be zero energy generation; however, if the Renewable Energy Improvement is a replacement of an

existing renewable energy system, the Energy Assessment provider shall establish the baseline using performance and/or nameplate ratings of the existing system.

### **Electric Vehicle Charging Systems**

For all C-PACE Projects that include an Electric Vehicle Charging System, the Record Owner must submit an assessment of the benefits of the Electric Vehicle Charging System. This assessment must include:

- Description of the proposed Electric Vehicle Charging System
- Projected energy consumption of the Electric Vehicle Charging System
- Analysis of cost savings to be achieved by the Electric Vehicle Charging System may include reductions in consumption of transportation fuels and operations and maintenance cost savings. The analysis may assess additional monetary savings or revenue generation to be achieved by the Electric Vehicle Charging System.
- Assessment of utility tariffs and interconnections issues
- Present a summary of the estimated implementation cost for the measure, the simple payback period in years, and the simple ROI
- Assumptions affecting the analysis, including, but not limited to:
  - Utility and fuel cost escalation rate assumptions
  - Any tax benefits
  - Estimated useful life of the Electric Vehicle Charging System

The energy generation baseline for all Electric Vehicle Charging Systems is an internal combustion engine used for transportation.

### **Energy Efficiency Improvement Energy Assessment Guidelines**

For projects that include ECMs that are Energy Efficiency Improvements, the Energy Assessment will follow a methodology consistent with standard ASHRAE guidelines and calculated using a U.S. Department of Energy-approved building energy modeling software or detailed engineering calculations demonstrating that the whole building exceeds the local building code.

## **Qualifying Equipment**

PACE financing may be used to pay for Energy Efficiency Improvements to Eligible Properties. An Energy Efficiency Improvement is an improvement to a commercial or industrial premises (subject to Eligible Property guidelines), that reduces the usage of energy, or increases the efficiency of energy usage, at the premises under the PACE Act, products or devices that are not permanently fixed to real property are not considered to be Energy Efficiency Improvements.

The following items may constitute Energy Efficiency Improvements:

- High efficiency heating, ventilating and air conditioning (“HVAC”) systems

- High efficiency chillers, boilers, and furnaces
- High efficiency water heating systems
- Energy management systems and controls
- Distributed generation systems
- High efficiency lighting system upgrades
- Building enclosure and envelope improvements
- Water conservation and wastewater recovery and reuse systems
- Combustion and burner upgrades
- Heat recovery and steam traps
- Water management systems and controls (“indoor and outdoor”)
- High efficiency irrigation equipment
- Solar energy systems

Ineligible Energy Efficiency Improvements include but are not limited to:

- Compact fluorescent and LED screw-in lamps
- Plug load devices
- Measures that are not permanently installed and can be easily removed
- Measures that save energy solely due to operational or behavioral changes
- Power factor correction, power conditioning
- Any measure that does not result in energy savings, water savings, or renewable energy production
- Any measure that cannot be explained in terms of industry-standard engineering or scientific principles

C-PACE Financing terms shall not exceed the expected life of the proposed Energy Conservation Measure as described in the Energy Assessment. For projects that include multiple Energy Conservation Measures, the term of a C-PACE Financing should be the weighted average of useful life.

## Energy Assessment Requirements

The Energy Assessment for a C-PACE project must address the following components:

- Written description of the proposed C-PACE Project.
- Expected annual energy savings (kWh or therms), electrical demand reduction (kW), water savings (gallons or ccf), renewable energy capacity (kW), renewable electrical production (kWh) and operational cost (\$) savings.
- Estimate of the useful life of each ECM.
- The total project capital cost required for each ECM or for packages of ECMs if interactive effects between ECMs make itemized costs impractical.
- Projected annual energy and water bill savings and operating cost assumptions.
- Provide clear and logical documentation of assumptions for energy savings calculations.
  - Document assumptions and inputs to calculations (e.g., hours of operation, equipment efficiencies, lighting power, controls, load factors, power factor, motor efficiencies, etc.) and use consistently throughout any calculations (as

- appropriate).
  - Key numbers should be easily identifiable (circled, bold, highlighted, etc.) with correct units shown.
- A copy of proposed relevant equipment specs, data sheets, etc.

A qualified energy engineer will use generally acceptable engineering calculations or a building energy model in a U.S. Department of Energy (DOE)-approved energy modeling software to determine savings attributable to the proposed ECMs.

## Cost Effectiveness

An energy improvement project must be cost effective to qualify for C-PACE financing. A cost-effective calculation should include any financing costs and associated fees. Upfront incentives and ongoing value streams available to the project, including, but not limited to, energy efficiency or renewable incentives and tax credits, should be included in the cost-effective calculation. The project developer must also provide additional documentation to substantiate its values.

Estimates of savings and costs must be adequately documented. The Authority reserves the right to request additional documentation to verify estimated costs and savings at its discretion.

## Eligible Local Government C-PACE Districts

MTPACE is available to commercial Record Owners located in all communities within the State of Montana, subject to the applicable local government's initial one time election to participate in the program. A local government must authorize its participation in MTPACE through adoption of a final C-PACE Resolution by the appropriate municipal process.

Local governments are not responsible for and do not authorize participation in C-PACE by each project. The Authority will coordinate and support the efforts to assist each local government that wishes to opt-in to MTPACE. Local governments interested in C-PACE should contact the Authority directly to discuss the MTPACE program.

Among benefitting the Record Owner by implementing energy-and water-saving measures, local governments see the benefits of a C-PACE program as well, either through direct or indirect benefits to its community. For example, they:

- Enhance the value and efficiency of existing buildings;
- Boost the local economy by creating new job opportunities for laborers, and new business opportunities for contractors, engineers, commercial lenders, professionals, equipment vendors, and manufacturers;
- Increase business retention and expansion in the C-PACE region by enabling cost effective energy and water saving updates to existing property;
- Improve productivity through optimized energy usage; and
- Better enable local governments to meet their water conservation goals.

MTPACE is designed to be self-sustaining and requires minimal support from the local government. Furthermore, because the C-PACE program is tax neutral, it achieves all of the benefits without imposing a burden on the local government's general fund. The program is designed to benefit all parties involved.

Under MCA 90-4-1306, once a local government is interested in creating a C-PACE district, the local government must:

1. Adopt a Resolution of Intent (Appendix H) that includes:
  - a. a statement of intent to establish a commercial property-assessed capital enhancements program describing the role of the governing body and the role of the authority in administering the program;
  - b. the types of energy conservation projects that may be included in the program;
  - c. a reference to the program plan required by 90-4-1305 and a location where the plan is available for public inspection; and
  - d. the time and place for a public hearing on the proposed program;
2. Hold a public hearing at which the public may comment on the proposed program and the program plan required by 90-4-1305; and
3. Adopt a Resolution Establishing a C-PACE Program (Appendix I) and setting the terms and conditions of the program, including:
  - a. How the governing body will meet the program plan requirements established by the authority in 90-4-1305. To meet the requirement of this subsection (1)(c)(i), the resolution may incorporate a program plan or an amended version of a program plan by reference;
  - b. A description of the aspects of the program that may be changed without a public hearing and the aspects that may be changed only after a public hearing;
  - c. Identification of an official authorized to enter into a program contract on behalf of the program with entities providing funding for the program; and
  - d. Identification of an official authorized to enter into a program contract on behalf of the governing body with record owners.

## Independent Reviewers

All C-PACE projects require an independent reviewer to review the energy assessment created by a professional engineer to verify the EMCs cost effectiveness. Energy assessment reports must be prepared and submitted by an energy professional engineer or by a team including an energy engineer. An energy engineer is defined as a professional holding one or more of the following certifications:

- Building Energy Assessment Professional (BEAP)
- Building Energy Modeling Professional (BEMP)
- Certified Energy Manager (CEM)
- Certified Measurement and Verification Professional (CMVP)
- Certified Energy Auditor (CEA)
- Certified Commissioning Professional (CCP)

- Certified Commissioning Authority (CxA)
- Building Commissioning Professional Certification (BCxP)
- Other certifications not listed but deemed appropriate will be accepted and added to this list.

A Registered Contractor with relevant demonstrated experience may also be approved by the Authority to conduct Energy Assessments. Written Authority approval of the registered contractor to prepare Energy Assessments must be granted prior to approval of any Full Application. MTPACE recognizes that developers and installers of Renewable Energy Improvements and Electric Vehicle Charging Systems may be able to provide a qualifying Renewable Energy Feasibility Study to a Record Owner without engaging an energy engineer, as described above. The name, firm name, and credentials of the energy engineer shall be included in the Energy Assessment.

## Eligible Lenders

C-PACE Projects will be financed by lenders in an open market model. This model relies on private capital to finance projects and does not obligate the State of Montana, the Authority, or the local government to support or guarantee funding for projects. In this model, the Record Owner finds an Eligible Lender (see below) and negotiates the terms of financing with them. Lenders will extend loans to finance Energy Efficiency Improvements. Financing documents executed between Record Owners and Lenders will impose a contractual assessment on Eligible Property to repay the Record Owner's financing of the Energy Efficiency Improvements. The Lenders will ensure that Record Owners demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

The PACE Act does not set criteria for financial institutions or investors to be MTPACE Lenders. However, the Authority will follow best practices of other C-PACE programs by recommending that Lenders be:

- Any federally insured depository institution, such as a bank, savings bank, savings and loan association, and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a small business;
- Small business investment company;
- Any publicly traded entity; or
- Any private entity that:
  - Has a minimum net worth of \$5 million; and
  - Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending; and
  - Can provide independent certification as to availability of funds;
- All Lenders must have the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

Any Lender can participate in the MTPACE program as long as it is a financially stable entity with the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts. **The Record Owner selects the Lender, not the Local Government, Contractor, or the Authority.**

## Eligible Contractors

MTPACE seeks to facilitate good, locally-based jobs for contractors and their employees. MTPACE requires that projects financed through MTPACE be installed by experienced commercial contractors. The Record Owner and C-PACE Lender are required to ensure that qualified, reputable contractors are chosen to perform the work on the C-PACE Project according to plans, specifications, and requirements set forth in these guidelines. Installation contractors must register with MTPACE and certify that they hold all licenses required to install the applicable ECM(s). Upon acceptance of the MTPACE terms and conditions and approval by the Authority, the installation contractor will become a Registered Contractor in the MTPACE program.

### Qualified Contractor

MTPACE will provide Record Owners a list of registered contractors who have met certain criteria which they may wish to use to select for their projects. This is a service to Record Owners and is a means to encourage the use of registered contractors. Participating contractors are encouraged to be knowledgeable about C-PACE financing in order to participate in the program.

### MTPACE Contractor application process

- Contractor submits application to MTPACE to be considered a registered Contractor
- Staff reviews application
- If Contractor meets criteria, they are notified of such determination
- The Contractor is listed on the MTPACE website

### Criteria to be accepted as MTPACE commercial Contractor:

- Company is licensed to do business in the State of Montana
- Contractor has all required licenses and appropriate certifications listed below
- Company has \$1,000,000 in liability coverage
- Company is bonded
- Company provides workers comp coverage for employees
- Company has not been disbarred from working in Montana

### Required certifications

Contractors performing work in the below referenced areas must have one or more employees assigned to the project with one of the following certifications:

#### HVAC



- Masters' plumber license
- EPA Section 608 Type 2 or 3 certification

#### **Solar Photovoltaic/Solar Thermal**

- North American Board of Certified Energy Practitioners (“NABCEP”)
- Solar PV Installer
- Solar Thermal Installer

#### **Geothermal**

- International Ground Source Heat Pump Association (“IGSHPA”)
- Accredited Driller
- Accredited Installer

MTPACE reserves the right to modify qualifications for contractors and will notify contractors of the new requirements.

## **MTPACE Process**

### Prior to Application

To start the process, the Record Owner will work with a qualified licensed engineer to conduct an Energy Assessment of the Property. The Energy Assessment for a C-PACE project must address the following components:

- Written description of the proposed C-PACE Project.
- Expected annual energy savings (kWh or therms), electrical demand reduction (kW), water savings (gallons or ccf), renewable energy capacity (kW), renewable electrical production (kWh) and operational cost (\$) savings.
- Estimate of the useful life of each ECM.
- The total project capital cost required for each ECM or for packages of ECMs if interactive effects between ECMs make itemized costs impractical.
- Projected annual energy and water bill savings and operating cost assumptions.
- Provide clear and logical documentation of assumptions for energy savings calculations.
  - Document assumptions and inputs to calculations (e.g., hours of operation, equipment efficiencies, lighting power, controls, load factors, power factor, motor efficiencies, etc.) and use consistently throughout any calculations (as appropriate).
  - Key numbers should be easily identifiable (circled, bold, highlighted, etc.) with correct units shown.
- A copy of proposed relevant equipment specs, data sheets, etc.

A qualified energy engineer will use generally acceptable engineering calculations or a building energy model in a U.S. Department of Energy (DOE)-approved energy modeling software to determine savings attributable to the proposed ECMs.

### Application

Once the Energy Assessment is complete and shows the cost effectiveness of the C-PACE Project, the Record Owner can submit the Full Application (see Appendix C) to the Authority

outlining the Energy Efficiency Improvements. Each application must be accompanied by the required application fee and must include:

- The completed Energy Assessment referenced above;
- A description of the specific real property to which the qualified improvements will be permanently fixed; and
- The total amount of financing, including any transaction costs, to be repaid through assessments.

Based on this information, the Authority may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet program requirements.

#### Engage with Contractor and Receive Independent Review

Based on this preliminary letter, the Record Owner may engage with a Contractor if they have not already done so. The Authority will provide a listing of Registered Contractors, but a Record Owner can choose a contractor not from the Authority listing. Note: Under MCA 90-4-1305, the Contractor must use a skilled and trained workforce. In addition, projects financed with MTPACE financing must require contractors and subcontractors to give preference to the employment of bona fide Montana residents, if the Montana residents have substantially equal qualifications to those of nonresidents.

Once design of the project and a final calculation of the expected costs and savings is completed, it will be reviewed by a qualified independent reviewer. The review is conducted by a licensed engineer with the relevant professional certifications. The reviewer is chosen by the Record Owner and cannot have a financial interest in the project. Alongside the independent review of the Energy Assessment, the reviewer will include additional considerations of savings and costs outlined below.

Savings considered in the review include, but are not limited, to:

- Energy efficiency savings;
- Water use reduction savings;
- Estimated savings from renewable energy generation;
- Tax credits and deductions, rebates, grants and other incentives applicable to the qualifying improvements;
- Expected savings from improved efficiency in maintenance and operations; and
- Expected savings from using C-PACE in replacement of mezzanine debt or preferred equity.

Costs considered in the review include, but are not limited, to:

- The cost of the Energy Efficiency Improvements
  - This can include the incremental increase in costs over a minimally code-compliant installation;
- Materials and labor for installation of above;
- Soft costs such as program fees, planning, and design; and
- Loan interest and other expected financing fees.

Estimates of savings and costs must be adequately documented. The Authority reserves the right to request additional documentation to verify estimated costs and savings at its discretion.

#### Obtain Mortgage Lender Consent

The Record Owner shall obtain written consent in a form substantively similar to that of Model Consent Agreement in Exhibit G from any mortgage holder prior to the issuance of C-PACE financing. The Record Owner must provide:

- An executed consent agreement, properly notarized and executed within three months prior to the Full Application for a contract;
- A record of the consent agreement from the office of the County Clerk and Recorder in the county where the property is located; and
- A secretary's certificate or substantially similar certification that the person who executed the consent agreement is authorized to sign such an agreement.

#### Secure Financing

After receiving the Consent Agreement from any current mortgage holder (if applicable), the Record Owner will take the preliminary approval from the Authority as well as the information from the reviewer and secure a commitment from an Eligible Lender. Under statute, the assessment payment period cannot exceed the useful life of the project that is the basis for the loan and assessment. The expected cost savings derived from improvements financed with PACE loans are expected to match or exceed the total cost of project over the term of the financing. The financing package from the Lender may include soft costs such as program fees, planning, and design.

#### C-PACE Financing Closing

Prior to closing on the C-PACE loan, the Record Owner is expected to provide to the Authority the following documentation:

- The reviewer's report conducted by a qualified, independent third party, showing water or energy baseline conditions and the projected water or energy savings, or the amount of renewable energy generated attributable to the project.
- Documentation that there are no delinquent taxes, special assessments, or water or sewer charges are not due on the real property. And that delinquent assessments on the real property under a C-PACE Program are not due.
- Prior to closing the financing, the Record Owner will via the Borrower Acknowledgement of Risk and Certification as to Montana CPACE Programmatic Requirements that the Record Owner understands and accepts the terms of the contract and financing.

With the above information as well as the Full Application, the Authority will make a determination that:

- The Record Owner and the property are eligible to participate in the program;
- The proposed improvements are reasonably likely to decrease energy or water consumption or demand; and
- The period of the requested assessment does not exceed the useful life of the project.

With the Authority determination of compliance, the Lender can then notify the Local Government and the Authority that the Record Owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

#### File Assessment

Once the program requirements are met, the Local Government will enter into a written contract with the Record Owner. The contract will impose a contractual property tax assessment on the Record Owner's Eligible Property to repay the Lender's financing of the Energy Efficiency Improvements. The Lender will file "A Notice of Contractual Assessment Lien," in substantially the form in Appendix F in the Official Public Records of the County where the Eligible Property is located, as notice to the public of the assessment, from the date of filing. The contract and the notice must contain the amount of the assessment, the legal description of the property, the name of the Record Owner, and a reference to the statutory assessment lien provided under the PACE Act.

Before entering a contract with a Record Owner under a program, the Local Government shall verify that delinquent taxes, special assessments, or water or sewer charges are not due on the real property, and that delinquent assessments on the real property under a commercial property-assessed capital enhancements program are not due.

The execution of the written contract between the Local Government and the Record Owner and recording of the Notice of Contractual Assessment Lien (Appendix F) incorporate the terms of the financing documents executed between the Record Owner and with the Lender to repay the financing secured by the assessment. The Lender will advance financing to the Record Owner, and the terms for repayment will be such terms as are agreed between the Lender and the Record Owner. Under the form Lender contract attached in Appendix E the Lender or a designated servicer will agree to service the debt secured by the assessment.

#### Complete Project

With funds from the Lender, the Record Owner can purchase directly the equipment and materials for the Energy Efficiency Improvement and contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of the improvements. Alternatively, the Lender may make progress payments to the Record Owner as the Energy Efficiency Improvement is installed.

As per MCA 90-4-1305, when an energy conservation project is completed, the contractor who completed the project shall submit written verification to the Authority that the energy conservation project was properly installed and is operating as intended. Projects must be completed according to the design approved by the reviewer and in compliance with state and local building and energy codes. If the design needs modification, the changes must be reviewed and approved by the independent reviewer.

#### Change Orders

All change orders that result in a substantial alteration of C-PACE funded improvements or related anticipated energy and water savings or resiliency benefits are required to be preapproved by the Authority to ensure that the changes to the C-PACE project remain consistent with the

requirements as set forth in the Program Guidelines. The property owner shall provide the following documentation:

- Narrative description of the change in C-PACE project scope and purpose for such a change;
- Revised C-PACE project budget to account for changes in C-PACE project cost;
- A letter from a qualified professional certifying that the revised improvements remains eligible for C-PACE financing; and
- Approval of the change by the C-PACE Lender.

#### Verification Review

After an Energy Efficiency Improvement is completed, the Authority requires the Contractor who completed the project to submit written verification to the Authority that the energy conservation project was properly installed and is operating as intended. The verification report conclusively establishes that the improvement is an Energy Efficiency Improvement, and the project is qualified under the C-PACE Program.

#### Loan Repayment

The Lender will receive the Record Owner's assessment payments to repay the debt and remit to the Local Government any administrative fees. The Lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided all of the following conditions are met:

- The assignment or transfer is made to an Eligible Lender, as defined above; and
- The Record Owner and the Local Government are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the schedule for repayment of the debt; and
- The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Lender's obligations under the Lender contract.

#### **Loan Closing**

Pre-closing documents (may be submitted following C-PACE Approval, before close of the C-PACE Financing):

- Contract between Local Government and Record Owner (Appendix D)
- Contract between Local Government and Lender (Appendix E)
- PACE Assessment Lien (Appendix F)
- Consent Agreement (Appendix G)
- Borrower Acknowledgement of Risk and Certification as to Montana CPACE Programmatic Requirements (Appendix J)

## Program Fees

MTPACE reserves the right to modify its fee structure at any time due to changes to program requirements or market factors. Such modifications will be published in updates to the Program Guidelines.

### **Application Fee**

A \$250 fee is due to the Authority at the time the Full Application is submitted for review. This fee is to be paid before the Authority will begin review of the Full Application.

### **Program Fee**

The Program Fee is paid to the Authority at or prior to the C-PACE Financing closing date. A one-time administration processing and Program Fee that equals one percent (1.00%) of the C-PACE Financing amount. The Program Fee shall be no less than a minimum of \$1,000, nor greater than a maximum of \$75,000. The final fee will be reduced by the amount of the initial application fee. The fee may be capitalized into the C-PACE Financing amount for the C-PACE Project.

### **Program Expenses**

The foregoing Application Fee and Program Fee include the suite of fees generally necessary to cover the regular costs of administration of the MTPACE Program. These costs and expenses do not include any specialized professional services that may be necessary should the circumstances of any particular C-PACE Project require them. For example, and without limitation, should any participant in a C-PACE Project submit substantive comments to the MTPACE program documentation, request a legal opinion from MTPACE counsel or require other time and resource intensive review of a transaction, the Record Owner shall be responsible for covering such MTPACE expenses at cost. These expenses may be paid out of the proceeds of the C-PACE Financing. The Authority will require evidence that such expenses will be paid before closing of a C-PACE Financing may proceed.

### **Qualifying Expenses**

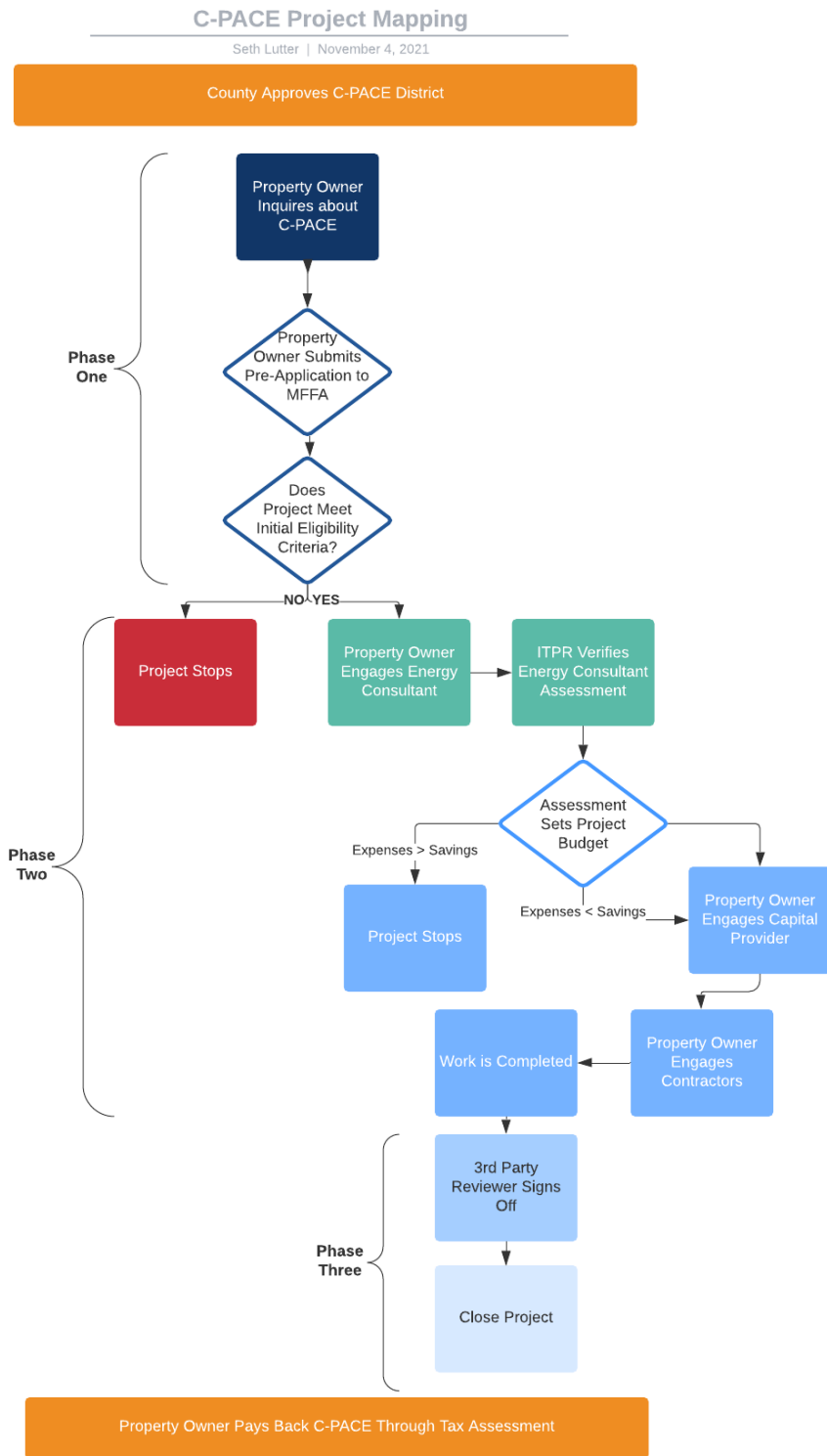
The following costs may be rolled into the MTPACE agreement:

- Energy audits/renewable energy studies (REQUIRED)
- Equipment costs
- Installation costs
- Operation and Maintenance (O&M) costs
- Feasibility costs
- Recording fees
- Energy evaluations
- Design, drafting, engineering, labor costs
- Permit fees

- Inspection charges
- Appraisal costs

Self-installation costs do not qualify, and costs must be considered reasonable. MTPACE evaluates costs on a case-by-case basis and may require additional bids to validate reasonability.

# C-PACE Project Map





## Disclosure

- The Authority does not provide legal advice, and will not mediate any disputes between any participants, including but not limited to, Record Owner, owners of Eligible Properties and their tenants, C-PACE Lenders, Contractors, energy service companies, and utilities.
- The Authority does not provide any accounting advice regarding how a Record Owner should treat the C-PACE Financing in their books and records.
- The Authority has the right to review all projects for eligibility and may approve C-PACE Projects for C-PACE Financing according to the standards and criteria set forth in this Program Guidelines.
- MTPACE retains ultimate discretion whether to approve a C-PACE Financing and enter into a C-PACE Special Charge and Financing Agreement to, among other things, levy a C-PACE Special Charge against an Eligible Property.
- In addition to other designated and implied responsibilities in the C-PACE Program, Record Owners are responsible for reviewing the terms, conditions, and obligations implied by the Financing Agreement, as well as the terms of any supplemental agreements with the C-PACE Lender and all agreements with participating Contractors, independent reviewers, and any other parties to the project.
- The C-PACE Program Administrator:
  - Does not endorse any particular C-PACE Lender, installation contractor, engineering firm, manufacturer, product, or system design by this offering.
  - Are not responsible for any tax liability imposed on the recipient as a result of the payment.
  - MAKE NO REPRESENTATION OR WARRANTY, AND ASSUME NO LIABILITY WITH RESPECT TO THE QUALITY, SAFETY, PERFORMANCE, OR OTHER ASPECT OF ANY DESIGN, CONSULTING, PRODUCT, SYSTEM, EQUIPMENT, OR APPLIANCE INSTALLED OR RECEIVED AND EXPRESSLY DISCLAIM ANY SUCH REPRESENTATIONS, WARRANTIES, AND LIABILITY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Please contact your Contractor for detailed manufacturer equipment warranties.
  - Does not guarantee that installation and operation of energy efficient equipment will result in reduced usage or in cost savings to a Record Owner or any occupants of an Eligible Property.
  - Is not responsible for the proper disposal/recycling of any waste generated as a result of this project.
  - Is not liable for any damages, including any incidental or consequential damages, arising out of the operation or malfunction of the products, equipment, or appliances, or the installation thereof related to a C-PACE Project.

- Unless notified in writing, the Authority reserves the right to publicize participation in the program.
- Upon reasonable notice period, the Authority may schedule a site visit to verify that qualified products, systems, equipment, or appliances were installed.

## Appendix A: Eligible C-PACE Improvements and Typical Simple Payback Range

### Common Eligible Energy Conservation Measures

The following list of predominant, long-standing, proven energy efficiency technologies is intended as a reference list for C-PACE Montana Record Owners and can change at any time. If not included on this list, Authority will review proposed ECM(s) and accept them on a case-by-case basis.

- High efficiency lighting
- Heating ventilation air conditioning (HVAC) upgrades
- New automated building and HVAC controls
- Variable speed drives (VSDs) on motors fans and pumps
- High efficiency chillers
- High efficiency boilers and furnaces
- High efficiency hot water heating systems
- Combustion and burner upgrades
- Fuel switching
- Water conservation measures
- Heat recovery and steam traps
- Building enclosure/envelope improvements
- Building automation (energy management) systems
- Renewable energy systems
- Electric vehicle charging stations
- Voltage optimization devices that reduce energy consumption by an end user

The following end-use savings technologies are generally more applicable to industrial facilities:

- New automated process controls
- Heat recovery from process air and water
- Cogeneration used for peak shaving
- Process equipment upgrades
- Process changes

Shown below are key aspects of some of the most commonly applied technologies listed above, with their typical simple payback range. These payback ranges are only provided for informational purposes and should not be construed as a guarantee of performance or requirement for MTPACE funding eligibility.

### **Lighting (typical two- to three-year simple payback)**

- Daylight controls and natural daylighting designed to reduce energy and improve visual comfort.
- Upgrades for existing fluorescent fixtures including electronic ballasts, T8 lamps, and reflectors including the installment of LED bulbs and fixtures.
- Meeting rooms and other intermittently occupied spaces can garner significant energy savings with the use of timers and occupancy sensors.
- Smaller impact opportunities including security lighting, stairwell lighting, exterior night-time security lighting and exit signs.

### **Refrigeration (typical 3 to 5 year simple payback)**

- Install improvements to refrigerated cases and walk-in coolers to improve efficiency and decrease waste.

- Additional insulation, anti-sweat heater controls, auto-closers for cooler/freezer doors, case-lighting controls, improved defrost controls, suction line insulation, etc.
- Thermal Storage Systems (for load shifting).
- Compressors (VFD and controls, heat recovery, mechanical sub-cooling, evaporative condensers, etc.)

**Motors (typical 3 to 5 year simple payback)**

- High efficiency electric motor replacements usually pay back when a motor is running for long periods at high load, or at the end of motor life.
- The cost premium over standard motors normally can be recovered in less than 2 years
- Motor sizing to the actual load profile to improve efficiency and control electrical power factor.

**Variable Speed Drives (typical 3 to 5 year simple payback)**

- Applied to motors, pumps and fans
- Matches motor use to variable operating load
- Can save up to 40 percent in power consumption
- Can be packaged with controls
- Extends motor life.

**HVAC (typical 2 to 8 year simple payback)**

- New packaged units can increase efficiency and indoor comfort
- Proper sizing of HVAC equipment is a major opportunity, since full-load operation is more efficient than part load operation - consider fan capacity reduction or staging of 2 smaller units rather than partial loading of one large unit
- Install VSDs on HVAC motors
- Balance air and water supply systems to remove trouble spots demanding inefficient system operation
  - Improve maintenance
  - Eliminate simultaneous heating and cooling
  - Install economizers and direct digital controls
- Variable air volume conversions versus constant air flow
- Ventilation reduction
- Unoccupied shutdown or temperature setback/setup (controls).

**Chillers (typical 5 to 10 year simple payback)**

- New chiller models can be up to 30-40 percent more efficient than existing equipment.
- Upgrade lead chiller(s) (base load) to high efficiency
- Manage chiller and condenser settings to minimize compressor energy
- Optimize pumping energy for distribution of chilled water
- Optimize HVAC operation to:
  - Improve temperature/humidity control
  - Eliminate unnecessary cooling loads
- CFC reclamation program/inventory - chiller replacement may achieve both CFC management and energy efficiency objectives.

**Boilers (typical 3 to 5 year simple payback)**

- Replace steam with hot water boilers for hot water heating loads
- Improve maintenance
- Optimize operation/staging in multiple boiler plants
- Optimize boiler controls

- Tune or replace burners
- Add small “pony” boilers for low loads:
  - Reduced fuel consumption/energy costs
  - Reduced emissions
  - Reduced maintenance costs
  - Higher reliability.

**Heat Recovery (typical 2 to 4 year simple payback)**

- Heat recovery devices to capture waste heat from water, process heat and exhaust air to re-use it for preheating: of building intake air
  - Boiler combustion air
  - Boiler feed-water
  - Inlet water for domestic hot water.

**New Automated Building and HVAC Controls (typical 3 to 5 year simple payback):**

- Old controls may still be pneumatic systems based on compressed air - new electronic controls are more precise and reliable, with greater capabilities.
- Can automate lighting, chiller, boiler and HVAC operation:
  - Load shedding
  - Optimal start/stop/warm up
  - Ventilation control and heat recovery ventilation (HRV)
- Whole-building energy management systems may come with other advanced control technologies:
  - Security, fire and life safety
  - Alarm monitoring and report generation
  - Preventive maintenance scheduling
- Remote monitoring/metering capabilities may be attractive.

**Building Shell and Fenestration (typical 3 to 10 year simple payback)**

- Roof insulation, combined with reflective roof coatings in warm climates, reduces energy consumption
- Review building pressurization for proper ventilation:
  - Balance exhaust and intake air quantities
  - Add weather-stripping on doors and windows
  - Seal cracks and unnecessary openings
- Window films to reduce solar heat gain and/or heat loss
- Replace windows with more energy efficient glazing.

**Water Conservation Improvements (typical 3 to 5 year simple payback)**

- Domestic water use can be impacted greatly by the replacement of toilets, urinals, and other bathroom fixtures.
- Commercial kitchens can save water through the replacement of pre-rinse valves, dishwashers, and icemakers.
- Laundry equipment in commercial properties and Laundromats can benefit greatly with upgraded equipment.
- HVAC systems can reduce water consumption through the installation of cooling towers, condensers, and steam boilers.
- Industrial water consumption from car washes, film and x-ray processing, and high-tech manufacturing can be reduced through the installation of equipment involved in each specific process/facility.

### **Renewable Clean Energy Improvements (typical 3 to 15 year simple payback)**

- Solar photovoltaic power
- Solar thermal
- Wind Power
- Geothermal energy
- Fuel Cell
- Methane Gas from landfills
- Low emission advanced renewable energy conversion technologies
- Internal Combustion Engine (ICE) using renewable fuel
- Projects that seek to deploy electric, electric hybrid, natural gas or alternative fuel vehicles and associated infrastructure and any related storage, distribution, manufacturing technologies or facilities
- Sustainable Biomass Facility

### **Electric Vehicle Charging Stations (Simple payback period may vary widely)**

- Transitioning from gasoline and diesel powered vehicles frequently reduces total transportation-related energy consumption, as measured by total BTUs consumed.
- Electric vehicles have lower cost for operation, maintenance, and fuel than gasoline or diesel powered equivalents.

### **Ineligible Measures**

The following items will not be considered as efficiency measures under the MTPACE program:

- Compact fluorescent, screw-in lamps
- Plug load devices
- Measures that are not permanently installed and can be easily removed
- Measures that save energy solely due to operational or behavioral changes
- Power correction, power conditioning
- Any measure that does not result in energy savings, water saving, or renewable energy production.
- Any measure that cannot be explained in terms of industry-standard engineering or scientific principles
- Vending machine controllers
- Refrigerant charge (AC/Split Systems/Heat Pumps)

## Appendix B: ASHRAE Audit and Engineering Commissioning and Verification Descriptions

### **ASHRAE Level I**

An ASHRAE Level I energy audit consists of 1) a walk-through analysis to assess a building's energy cost, 2) a utility bill analysis to assess its efficiency (using ASTM BEPA Methodology or ASHRAE Preliminary Energy-Use Analysis (PEA) to establish the building's baseline energy use), and 3) conducting a brief on-site survey of the building. The walk-through may be targeted at a specific building component that is intended to be replaced or upgraded or added (such as in the case of installing a solar energy system) or may include checking all major energy-using systems. Operational metrics of building equipment are typically limited to data collection of nameplates, but may be more detailed if that data are readily available. Level I energy analysis should at the minimum identify ECMs and the associated potential energy savings, the estimated cost of the ECMs, and specify where further consideration and more rigorous investigation is warranted.

### **ASHRAE Level II**

An ASHRAE Level II energy audit is a more detailed investigation and includes a more comprehensive building survey and energy analysis than a Level I audit. It also includes more detailed financial analysis. In addition to nameplate data collection, empirical data may also be acquired through various field measurements using handheld devices. The Level II audit should at the minimum identify and provide the investment and cost savings analysis of all recommended ECMs that meet the owner's constraints and economic criteria, along with a discussion of any changes to operation and maintenance procedures. Detailed financial analysis includes ROI, IRR, NPV and payback period determination reflecting C-PACE Financing. Sufficient detail on projected energy savings is provided to justify project implementation.

### **ASHRAE Level III**

The ASHRAE Level III energy audit (often referred to as an "investment grade audit") is generally applicable to projects that are very capital intensive and demand more detailed field data gathering as well as more rigorous engineering analysis. The Level III energy audit provides even more comprehensive project investment and cost savings calculations to bring a higher level of confidence that may be required for major capital investment decisions. Data collection may involve field measurements acquired through data loggers and/or an existing energy management system.

### **Engineering Commissioning and Verification Requirements**

Engineering Commissioning and Verification of the ECMs' remodeled/installed in the subject C-PACE Project is to be performed by a qualified Engineer (engineering commissioning provider). The engineering commissioning provider is required to review the design, installation and performance of the remodeled/new building systems and compare to the energy assessment or

study or model (Energy Assessment and/or Renewable Energy Feasibility Study) according to an industry accepted Commissioning guideline or Commissioning scope of work approved by the Authority. The final commissioned systems should be configured as modeled in the Energy Assessment and/or Renewable Energy Feasibility Study for the remodeled/new systems that are included in the scope of the subject C-PACE Project. The remodeled/new systems are to be reviewed and tested for proper function per specified design criteria and sequences. All deficiencies are to be communicated to the Record Owner and shall be resolved.



## Appendix C: Application

### MTPACE PROJECT APPLICATION

#### SECTION 1. APPLICANT INFORMATION

#### Applicant Primary Contact - Person to whom all communication will be directed

Name:	Title:	
Email:	Phone:	
Organization:		
Mailing Street Address:		
City	State:	Zip Code:
Relationship of Primary Contact to Property:		

#### Property Legal Owner Name(s) - As they appear on property title

Owner 1 Name:	Organization/Title:
Owner 2 Name:	Organization/Title:
Owner 3 Name:	Organization/Title:

#### Record Owner Type - Check one

<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> 501(c)(3)
<input type="checkbox"/> Trust	<input type="checkbox"/> Partnership	<input type="checkbox"/> Other
<input type="checkbox"/> Individual(s)/Joint Tenants/Common Property (not in trust)		
IRS Tax ID Number:	Business Name:	
Legal Business Name (if different)		

## SECTION 2. PROPERTY INFORMATION

### Property Physical Address

Street Address:		County:
City	State:	Zip Code:
Property Tax Assessor-Collector ID or Reference Number:		

### Property Type - Check one

<input type="checkbox"/> Commercial	<input type="checkbox"/> Multifamily (>3 units)	<input type="checkbox"/> Industrial
<input type="checkbox"/> Other		
Legal Description:		

### Property Characteristics

Is there currently a mortgage on the property?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If there is a mortgage, who currently holds it?	
What is the outstanding principal on the mortgage?	\$
What is the anticipated life of the proposed improvements?	

## SECTION 3. OWNER INFORMATION

### Please Confirm the Following:

Owner is not subject to any outstanding, unsatisfied judgment:	
Owner is current with all taxes and assessments on property:	
Owner is current on all debts secured by the property:	

Owner has clear title to the property with no encumbrances:	
Property is not subject to any outstanding tax liens or notices of default:	
The Owner is not delinquent on other C-PACE assessments	

**Owner is able and willing to provide:**

Proof of Good Standing Status from the Secretary of State of Montana:	
Current Title Report demonstrating property is free of all liens including mechanics liens:	
Written consent to PACE lien from property Mortgagee, if applicable:	

**SECTION 4. PROPOSED PROJECT DETAILS**

**Project Development Status:**

Beginning investigation, i.e. unsure of which property improvements to pursue:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has a very specific set of desired property improvements:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have had an energy audit conducted:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have identified a contractor to implement the property improvements:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have developed a detailed scope of work for the project:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have identified what rebates or incentives are applicable to project:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have approached existing mortgage holder to inquire about obtaining written acknowledgement for participation in the program:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have identified which project investor will provide capital for the project:	<input type="checkbox"/> Yes <input type="checkbox"/> No

### Property Utility Information

What is the name of property's electric provider?

What is the name of property's water provider?

What is the name of property's natural gas provider?

Most recent year's total utility cost?

### SECTION 5. PROJECT FINANCIAL SUMMARY

#### Total Project Cost

Total Estimate Project Costs	\$
Less: Preliminary Estimate of Rebates/Incentives:	\$
Less: Record Owner Contribution:	\$
<b>Total Estimated PACE Financing Amount:</b>	<b>\$</b>

## Appendix D: Form Contract between Local Government and Record Owner

THIS COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENT (“PACE”) OWNER CONTRACT (“Owner Contract”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, Montana (“Local Government”), and \_\_\_\_\_ (“Property Owner”).

### RECITALS

- I. The Commercial Property Assessed Capital Enhancement Act of Montana (“PACE Act”), Montana Code Annotated, Title 90, Chapter 13, Part 12, authorizes the governing body of a local government to establish a program and designate a District within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of commercial or industrial facility, covered multifamily housing accommodation as defined in 49-2-305(6), MCA, or agricultural property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.
- II. Local Government has established a program under the PACE Act pursuant to a Resolution No. \_\_\_ dated \_\_\_\_\_, adopted by the \_\_\_\_\_ (the “PACE Program”), and has designated Montana Facility Finance Authority (“Authorized Representative”) as the representative authorized to provide required notice of the Assessment and enter into the Owner Contract and Lender Contract described herein, and has designated the entire territory within \_\_\_\_\_ [insert county or municipality] as a District (“District”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.
- III. Property Owner is the legal and record owner of the qualified “real property,” as defined in Section 90-4-1302(9) of the PACE Act, within the District located at \_\_\_\_\_, \_\_\_\_\_, Montana (the “Property”).
- IV. Pursuant to Application number \_\_\_\_\_, Property Owner has applied to Local Government to participate in the PACE Program by installing “energy conservation measures” or a “renewable energy system” on existing or new buildings, as defined in Section 90-4-1302 of the PACE Act (the “Energy Conservation Project”). The installation or modification of such Energy Conservation Project on the Property will be an Energy Conservation Project which satisfies the requirements of Section 90-4-1302(5) of the PACE Act (the “Project”). Property Owner has requested that Local

Government enter into this Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment (the "Assessment") on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Commercial Property Assessed Capital Enhancement Act of Montana to be filed in the in the office of the Clerk and Recorder of \_\_\_\_\_, Montana (the "Notice of Contractual Assessment Lien"), a copy of which is attached hereto as Exhibit A and made a part hereof, to repay the financing of such Energy Conservation Project. The Property, Energy Conservation Project, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

- V. The financing of such Energy Conservation project will be provided to Property Owner by \_\_\_\_\_ ("Lender"), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government to provide for repayment of the Financing secured by the Assessment under Section 90-4-1307 of the PACE Act and as by the PACE Program (the "Lender Contract"). The financing will include only those costs and fees for which an assessment may be imposed under the PACE Act. Local Government has agreed to levy and continue the Assessment for the benefit of Lender until such financing is repaid in full and to release the Assessment lien upon notice from Lender of such payment, and to foreclose the lien securing the Assessment for the benefit of Lender upon a default by Property Owner.
- VI. Semi-annual installments of the Assessment shall be collected by the Local Government at the same time and in the same manner as taxes collected under Title 15, Chapter 16, Montana Code Annotated. The Assessment installments will then be remitted by the Local Government to the Authorized Representative. The amounts due to the Authorized Representative identified in Exhibit B to the Lender Agreement shall be retained by the Authorized Representative and the Authorized Representative shall then remit the remaining proceeds of the Assessment installments to the Lender for payment of debt service due on the loan(s) secured by the Assessment.
- VII. As required by Section 90-4-1305(3)(b)(i) of the PACE Act, the written consent of holder(s) of any mortgage liens on the Property to subordinate the mortgage lien to the Assessment lien was obtained at least three months prior to the date of Property Owner's application for this Owner Contract and is attached hereto as Exhibit B and made a part hereof.
- VIII. Local Government has verified that delinquent taxes, special assessments, water or sewer charges, or delinquent assessments on the real property under a commercial property-assessed capital enhancements program are not due on the Property.
- IX. As required by Section 90-4-1305(4) of the PACE Act, the Authorized Representative has obtained independent verification from the Property Owner that the Property Owner

understands and accepts the terms of the Owner Contract and has made the verification available to the Local Government.

### AGREEMENT

The parties agree as follows:

Section 1. Levying of Assessment. In consideration for the financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the Lender Contract, Property Owner hereby requests and agrees to the levying by Local Government of the Assessment in the amount of \$ \_\_\_\_\_, to be collected with taxes by semi-annual payments of \$ \_\_\_\_\_ as set forth in the Notice of Contractual Assessment Lien, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, PACE Program and the financing documents between Property Owner and Lender (the "Financing Documents") which are described or listed on Exhibit C attached hereto and made a part hereof by reference. Property Owner promises and agrees to pay such amount and interest to Local Government, in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to the Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to secure the payment of such amount, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

Section 2. Maintenance and Enforcement of Assessment. In consideration for Lender's agreement to advance financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to levy and continue the Assessment on the Property for the benefit of Lender until the Assessment, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, PACE Program and the Financing Documents are paid in full, and to release the Assessment lien upon notice to the Authorized Representative from Lender of such payment. Local Government agrees, that installments of the Assessment due shall be included in each tax bill issued under 15-16-101, MCA, and shall be collected at the same time and in the same manner as taxes collected under Title 15, Chapter 16, MCA.

Section 3. Installments. The Assessment, including the amount financed and contractual interest, is due and payable in installments as set forth in the Notice of Contractual Assessment Lien and the Financing Documents. The Assessment shall include: (1) an application fee paid by Property Owner to Authorized Representative at loan closing, and (2) a recurring administration fee paid by Property Owner to the Authorized Representative. Semi-annual installments of the Assessment shall be collected by the Local Government at the same time and in the same manner as taxes collected under Title 15, Chapter 16, Montana Code Annotated. The Assessment installments will then be remitted by the Local Government to the Authorized Representative. The amounts due to the Authorized Representative identified in Exhibit C hereto shall be retained by the Authorized Representative and the Authorized Representative shall then remit the remaining proceeds of the Assessment installments to the Lender for payment of debt service due on the loan(s) secured by the Assessment. As required by Section \_\_\_\_\_ of the PACE Act, the period during which such installments are payable does not exceed the useful life

of the Project. When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government's rights under this Owner Contract will cease and terminate upon notice from Lender to the Authorized Representative that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Owner Contract and deliver the release to the Authorized Representative. Thereafter, the Authorized Representative will record the release.

Section 4. Assignment of Right to Receive Installments. Lender will have the right to assign or transfer the right to receive the installments of the financing secured by the Assessment, provided all of the following conditions are met:

1. The assignment or transfer is made to a qualified lender as defined in the Lender Contract;
2. Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the payment schedule included in the Notice of Contractual Assessment Lien and the Financing Documents; and
3. The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Lender's obligations under Lender Contract.

Upon written notice to Property Owner and Authorized Representative of an assignment or transfer of the right to receive the installments that meets all of these conditions, the assignor shall be released of all of the obligations of the Lender under such Lender Contract accruing after the date of the assignment assumed by and transferred to such assignee or transferee and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the installments that does not meet all of these conditions is void.

Section 5. Lien Priority and Enforcement. Pursuant to Section 90-4-1307 of the PACE Act, delinquent installments of the Assessment will incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty. Statutory penalties and statutory interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be assessed by Lender and retained by Lender.

The Assessment, together with any penalties and interest thereon, is a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the Office of the Clerk and Recorder of \_\_\_\_\_ until the Assessment and any penalties and interest are paid; and such lien has the same priority and status as other property tax and assessment liens, pursuant to Section 90-4-1307(3)(a) of the PACE Act. The lien created



by the Assessment runs with the land, and any portion of the Assessment that has not yet become due is not eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for any past due portion of the Assessment. *Id.*

In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse on Local Government and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.

In the event of a default by Property Owner in payment of the Assessment installments called for by the Financing Documents, the Assessment lien will be enforced by Local Government in the same manner according to Montana Code Annotated, Title 15, Chapter 16 that a property tax lien against real property may be enforced.

In a suit to collect a delinquent installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees, penalties, and interest due, in the same manner according to Section 15-16-506, MCA, as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent installment of the Assessment.

Section 6. Written Contract Required by PACE Act. This Owner Contract constitutes a written contract for the Assessment between the Property Owner and Local Government as required by Section \_\_\_\_\_ of the PACE Act. The Notice of Contractual Assessment Lien will be recorded in the Office of the Clerk and Recorder of \_\_\_\_\_ as notice of the contractual Assessment, in accordance with the requirements of Section \_\_\_\_\_ of the PACE Act. Pursuant to Section 90-4-1305(4)(b) of the PACE ACT, this Owner Contract maybe cancelled by the Property Owner within three (3) business days of signing the contract.

Section 7. Energy Conservation Project. Property Owner agrees that all energy conservation measures or renewable energy systems purchased, constructed, and/or installed through financing obtained pursuant to this Owner Contract shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of a sale or assignment of the Property.

Section 8. Preference for Montana Labor. Property Owner agrees that the Project shall comply with Section 90-4-1305(5) of the PACE Act. Property Owner agrees that contractors and any subcontractors working on the Project shall use a skilled and trained workforce. Property Owner Agrees that all contracts signed related to the Project shall require contractors and subcontractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, MCA, in the performance of the projects, if the Montana residents have substantially equal qualifications to those of nonresidents.

Section 9. Construction and Definitions. This Owner Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein,

and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the PACE Program, and/or (2) the PACE Act.

Section 10. Binding Effect. This Owner Contract inures to the benefit of Local Government and is binding upon Property Owner, its heirs, successors, and assigns.

Section 11. Notices. All notices and other communications required or permitted by this Owner Contract shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at its address shown below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

Section 12. Governing Law and Venue. This Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Montana. Venue shall be exclusively with the [insert number] Judicial District Court,[insert County], Montana.

Section 13. Entire Agreement. This Owner Contract constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

Section 14. Further Assurances. Property Owner 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 Owner Contract as may be reasonably necessary or required.

Section 15. Counterparts. This Owner Contract may be executed in any number of counterparts, each counterpart may be delivered originally or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

Section 16. Costs. No provisions of this Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

Section 17. Construction Terms. If the Lender Contract includes requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

EXECUTED effective as of \_\_\_\_\_, 20\_\_\_\_\_.

PROPERTY OWNER:

---

By:

Name:

Title:

Address:

EXECUTED effective as of \_\_\_\_\_, 20\_\_\_\_\_.

LOCAL GOVERNMENT:

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By:

Name:

Title:

Address:

## Appendix E: Form Contract between Local Government and Lender

THIS COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENT (“PACE”) LENDER CONTRACT (the “Lender Contract”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (“Local Government”) and \_\_\_\_\_ (“Lender”).

### RECITALS

A. The Commercial Property-Assessed Enhancements Act of Montana (“PACE Act”), Montana Code Annotated, Title 90, Chapter 13, Part 12, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of a privately owned commercial or industrial facility, covered multifamily housing accommodation as defined in 49-2-305(6), MCA, or agricultural property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a Resolution No. \_\_\_ dated \_\_\_\_\_, adopted by the \_\_\_\_\_ (the “PACE Program”), and has designated Montana Facility Finance Authority (“Authorized Representative”) as the representative authorized to provide required notice of the Assessment and enter into the Owner Contract and Lender Contract described herein, and has designated the entire territory within the \_\_\_\_\_ of \_\_\_\_\_ jurisdiction as a District (“District”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Pursuant to Application number \_\_\_\_\_, \_\_\_\_\_ (“Property Owner”) has applied to Local Government to participate in the PACE Program with respect to certain real property located at \_\_\_\_\_, \_\_\_\_\_, Montana (the “Property”) by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as [ select “energy conservation measure” or “renewable energy system”], as defined in Section 90-4-1302 of the PACE Act (the “Energy Conservation Measure” or “Renewable Energy Project”). The installation or modification of such [Energy Conservation Measure or Renewable Energy Project] on the Property will be a “Energy Conservation Project” as defined in Section 90-4-1302(5)of the PACE Act (the “Project”).

D. Property Owner and Local Government have entered into a written contract as required by Section 90-4-1304 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the “Owner Contract”), in which Property Owner has requested that Local Government impose an assessment (the “Assessment”) on the Property as set forth in the

Notice Of Contractual Assessment Lien Pursuant To Commercial Property Assessed Capital Enhancement Act of Montana to be filed in the in the Office of the Clerk and Recorder of \_\_\_\_\_, Montana (the “Notice of Contractual Assessment Lien”), a copy of which is attached to the Owner Contract as Exhibit A, to repay the financing of such Qualified Improvements. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (the “Financing”) will be provided to Property Owner by Lender in accordance with financing documents described in, or copies of which are included as, Exhibit B attached hereto and made a part hereof (the “Financing Documents”). Such Financing includes only those costs and fees for which an assessment may be imposed under the PACE Act. This Lender Contract is entered into between Local Government and Lender to provide for repayment of the Financing secured by the Assessment under Section 90-4-1307 of the PACE Act

F. As required by Section 90-4-1305(3)(b)(i) of the PACE Act, the written consent of each mortgage lien holder to the Assessment was properly notarized and executed within 3 months prior to the application for a contract, as shown by the copy of such consent(s) attached as Exhibit B to the Owner Contract.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Maintenance and Enforcement of Assessment. Lender agrees to provide the Financing for the Project in the total amount of \$\_\_\_\_\_, according to the terms set out in the Financing Documents attached hereto as Exhibit B. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this Lender Contract, Local Government agrees to levy and continue the Assessment for the benefit of Lender until the Financing, all contractual interest, any prepayment premium, additional penalties and interest imposed by the Lender under the Financing Documents according to the Financing Documents, and any statutory penalties, interest, attorney’s fees, or costs accrued in the event of default are paid in full. Pursuant to 90-4-1307, of the PACE Act, installments of the Assessments due must be included in each tax bill issued under 15-16-101, MCA, and must be collected at the same time and in the same manner as taxes collected under Title 15, chapter 16. Local Government shall have no obligation to pay the assessment and no liability to Lender should there be a default or an event of default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

Section 2. Installments. The Assessment, including the amount financed and contractual interest, is due and payable to Lender in installments as set forth in the Notice of Contractual Assessment Lien and Financing Documents. The Assessment shall include: (1) an application fee paid by Property Owner to Authorized Representative at loan closing, and (2) a recurring administration fee paid by Property Owner to the Authorized Representative. Semi-annual installments of the Assessment shall be collected by the Local Government at the same time and in the same manner as taxes collected under Title 15, Chapter 16, Montana Code

Annotated. The Assessment installments will then be remitted by the Local Government to the Authorized Representative. The amounts due to the Authorized Representative identified in Exhibit B hereto shall be retained by the Authorized Representative and the Authorized Representative shall then remit the remaining proceeds of the Assessment installments to the Lender for payment of debt service due on the loan(s) secured by the Assessment. As required by Section 90-4-1307(1)(b) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government's rights under this Lender Contract will cease and terminate upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Lender Contract. Thereafter, the Authorized Representative will record the release.

Section 3. Assignment of Right to Receive Installments. Lender will have the right to assign or transfer the right to receive the installments of the Assessment, provided all of the following conditions are met:

1. The assignment or transfer is made to a qualified lender, which may be one of the following:
  - a. Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
  - b. Any insurance company authorized to conduct business in one or more states;
  - c. Any registered investment company, registered business development company, or a Small Business Administration small business investment company;
  - d. Any publicly traded entity; or
  - e. Any private entity that: (i) Has a minimum net worth of \$5 million; (ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending; (iii) Can provide independent certification as to availability of funds; and (iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.;
2. Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the payment schedule included in the Financing Documents; and

3. The assignee or transferee of the right to receive the installments executes an explicit written assumption of all of Lender's obligations under this Lender Contract.

Upon written notice to Property Owner and Authorized Representative of an assignment or transfer of the right to receive the installments that meets all of these conditions, the assignor shall be released of all of the obligations of the Lender under this Lender Contract accruing after the date of the assignment and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the installments of the Assessment that does not meet all of these conditions is void.

Section 4. Financing Responsibility. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder.

Section 5. Lien Priority and Enforcement. As provided in the Owner Contract and Section 90-4-1307 of the PACE Act: Delinquent installments of the Assessment incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty. Statutory penalties and statutory interest payable under this paragraph will be paid to the Lender. The Assessment, together with any penalties and interest thereon, is a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the Office of the \_\_\_\_\_ County Clerk & Recorder until the Assessment and any penalties and interest are paid; and such lien has the same priority and status as other property tax and assessment liens, pursuant to Section 90-4-1307(3)(a) of the PACE Act. The lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due is not eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for any past due portion of the Assessment. *Id.* .

In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse on Local Government or the Authorized Representative and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.

In the event the Property is subdivided or otherwise split the Assessment shall continue to be levied upon the new parcel on which the [ select "energy conservation measure" or "renewable energy system"], is located.

In the event of a default by Property Owner in payment of the Assessment installments called for by the Financing Documents, the Assessment lien will be enforced by Local Government in the same manner according to Montana Code Annotated, Title 15, Chapter 16 that a property tax lien against real property may be enforced.

In a suit to collect a delinquent installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees, penalties, and interest due, in the same manner according to Section 15-16-506, MCA, as in a suit to collect a delinquent property tax. In the event such a suit includes collection of other delinquent assessments and property taxes, Lender shall be entitled to receive its pro rata share of any settlement or judgment entered in such suit to pay delinquent installments of the Assessment.

Section 6. Final Payment. When the Assessment has been satisfied and paid in full, together with all interest and prepayment premiums, if any, provided under the Financing Documents and all costs, fees, penalties, and interest applicable under the PACE Act and payable to Lender or Local Government, Local Government's rights under the Owner Contract will cease and terminate and the Local Government will no longer report the Assessments for collection with property taxes due on the Property.

Section 7. Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Lender Contract, and no implied duties on the part of Local Government are to be read into this Lender Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

Section 8. Costs. No provisions of this Lender Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, other than as is contemplated for expenditure and reimbursement under Section 5 above.

Section 9. Lender's Warranties and Representations. With respect to this Lender Contract, Lender hereby warrants and represents that on the date on which Lender executes this Lender Contract:

1. Lender is a qualified lender under the PACE Program, as defined in Section 3.1 above, and is fully qualified under the PACE Program to enter into this Lender Contract and the Financing Documents;
2. Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and
3. Lender has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government or any agent or employee of Local Government, express or



implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

Section 10. Third-Party Lending Required by the PACE Act. This Lender Contract constitutes a written contract between Local Government and Lender and Lender constitutes a third-party financier as required under Section 90-4-1304(2)(b) of the PACE Act.

Section 11. Construction and Definitions. This Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the Notice of Contractual Assessment Lien, (2) the Owner Contract, (3) the PACE Program, and/or (4) the PACE Act.

Section 12. Binding Effect. This Lender Contract is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

Section 13. Notices. All notices and other communications required or permitted hereunder shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

Section 14. Governing Law and Venue. This Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Montana. Venue shall be exclusively with the [insert number] Judicial District Court in and for [insert County], Montana.

Section 15. Entire Agreement. This Lender Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

Section 16. Counterparts. This Lender Contract may be executed in any number of counterparts, each counterpart may be delivered originally or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

Section 17. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a “energy conservation project” as defined in the PACE Program and Section 90-4-1302(5) of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

Section 18. Construction Terms. If this Lender Contract includes requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit C attached hereto and incorporated herein by reference. Such requirements may include,

among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

EXECUTED effective as of \_\_\_\_\_, 20\_\_\_\_\_.

LENDER:

\_\_\_\_\_

By:

Name:

Title:

Address:

MONTANA FACILITY FINANCE AUTHORITY AS AUTHORIZED  
REPRESENTATIVE FOR LOCAL GOVERNMENT:

\_\_\_\_\_

By:

Name:

Title:

Address:

**EXHIBIT A**

**OWNER CONTRACT**

**EXHIBIT B**  
**FINANCING DOCUMENTS**

Assessment Payment Schedule

Assessment Total:

Payment Schedule:

Project Completion Date:

<b>Payment Date</b>	<b>Total Payment</b>	<b>Principal Paid</b>	<b>Interest Paid</b>	<b>Administration Fee</b>	<b>Remaining Balance</b>

**Exhibit C**

Construction Terms

[if applicable]

Date	Draw down Amount	Purpose

## Appendix F: Model PACE Assessment Lien

### NOTICE OF CONTRACTUAL ASSESSMENT LIEN PURSUANT TO COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENT ACT OF MONTANA

#### RECITALS

- I. The Commercial Property Assessed Capital Enhancement Act of Montana (“PACE Act”), Montana Code Annotated, Title 90, Chapter 4, Part 13, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of a privately owned commercial or industrial facility, covered multifamily housing accommodation as defined in 49-2-305(6), MCA, or agricultural property to impose assessments on the property to finance the cost of energy conservation measures or a renewable energy system on existing or new buildings. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.
  
- II. \_\_\_\_\_ (“Local Government”) has established a program under the PACE Act pursuant to Resolution No. \_\_\_\_ dated \_\_\_\_\_, adopted by the \_\_\_\_\_ (the “PACE Program”), and has designated the Montana Facility Finance Authority (“Authorized Representative”) as the representative authorized to provide notice of the Assessment and enter into the Owner Contract and Lender Contract described herein, and has designated the entire territory within the \_\_\_\_\_ of \_\_\_\_\_ jurisdiction as a district (“District”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.
  
- III. \_\_\_\_\_ (“Property Owner”) is the legal and record owner of the qualified “real property,” as defined in Section 90-4-1302(9) of the PACE Act, within the District located at \_\_\_\_\_, \_\_\_\_\_, Montana, and more fully described in Exhibit A attached hereto and made a part hereof (the “Property”).
  
- IV. Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements described in Exhibit B attached hereto and made a part hereof, which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as a “energy conservation measure” or “renewable energy system, as defined in Section 90-4-1302(4) & (12) of the PACE Act (the “Qualified Improvements”). The installation or modification of such Qualified Improvements on the Property will

be a “energy conservation project” as defined in Section 90-4-1302(5) of the PACE Act. Property Owner has entered into a written contract (the “Owner Contract”) with Local Government pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment on the Property to repay the financing of such Qualified Improvements.

- V. The financing of such Qualified Improvements will be provided to Property Owner by \_\_\_\_\_ (“Lender”), a third-party lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 90-4-1304(2)(b) of the PACE Act and by the PACE Program (the “Lender Contract”). Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in the Lender Contract.

**NOW, THEREFORE:**

Section 1. Local Government hereby gives notice to the public that it has imposed an assessment on the Property in the amount of \$\_\_\_\_\_, payable in semi-annual installments of principal and interest as set forth on Exhibit C attached hereto, which together with all interest, fees, penalties, costs and other sums due under and/or authorized by the PACE Act, PACE Program, and the financing documents between Property Owner and Lender (the “Financing Documents”) is herein referred to as the “Assessment”.

Section 2. Pursuant to Section 90-4-1307 of the PACE Act, the Assessment, including interest and any penalties, costs, or fees accrued thereon:

- (i) is a first and prior lien on the Property from the date that this Notice of Contractual Assessment Lien is recorded in the office of the Clerk and Recorder of \_\_\_\_\_, Montana, until such Assessment, interest, penalties, costs, and fees are paid in full; and
- (ii) such lien shall be included in each tax bill issued under 15-16-101, MCA, and must be collected at the same time and in the same manner as taxes collected under Title 15, Chapter 16, MCA. Local Government has the same rights in the case of delinquency in the payment of such Assessment instalments described in Exhibit C as it does with respect to delinquent property taxes.

The lien created by the Assessment runs with the land, and according to Section 90-4-1307(3) of the PACE Act, any portion of the Assessment that has not yet become due is not eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for any past due portion of the Assessment. In the event of a sale or transfer of the Property by Property Owner (including, without limitation, a foreclosure sale for a past due portion of the Assessment), the obligations under the Financing Documents (including, without limitation, the portion of the Assessment that has not yet become due) will be transferred to the succeeding owner without recourse on Local Government or the Authorized Representative and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner’s period of

ownership. In the event the Property is subdivided or otherwise split the Assessment shall continue to be levied upon the new parcel on which the Qualified Improvements are located.

EXECUTED on \_\_\_\_\_, \_\_\_\_\_.

LOCAL GOVERNMENT:

By:

Name:

Title:

STATE OF MONTANA )

) ss.

County of \_\_\_\_\_ )

Signed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, as-  
\_\_\_\_\_.

\_\_\_\_\_

Signature of Notary

(Montana notaries must complete the following if not part of stamp at left)

(SEAL)

\_\_\_\_\_

(Print Name of Notary)

Notary Public for the State of Montana

Residing at \_\_\_\_\_, Montana

My commission expires: \_\_\_\_\_



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**EXHIBIT B**  
**QUALIFIED IMPROVEMENTS**

**EXHIBIT C**

**Assessment Payment Schedule**

Assessment Total:

Payment Schedule:

Project Completion Date:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance
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## Appendix G: Model Consent Agreement

### LENDER CONSENT TO PACE ASSESSMENT

Property Owner: \_\_\_\_\_  
Mailing address: \_\_\_\_\_

Lender: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

Property: the Real Property described in \_\_\_\_\_ County, Montana, more fully described in Exhibit A.

Street Address of Property: \_\_\_\_\_

### RECITALS

WHEREAS, Lender has made one or more loans to Property Owner secured by that Deed of Trust or Security Agreement (the “Deed of Trust”) dated \_\_\_\_\_ recorded in Book \_\_, Page \_\_, under Instrument No. \_\_\_\_\_ of the Real Property Records of \_\_\_\_\_ County securing the indebtedness described therein. The Deed of Trust, promissory note, or the notes creating the debt secured by the Deed of Trust, and all other loan agreements and other documents relating to the debt and Deed of Trust are referred to as the “Loan Documents.”

WHEREAS, Property Owner desires to enter into an agreement (the “PACE Agreement”) with the Local Government to impose an assessment (the “Assessment”) to repay the financing of a Energy Conservation Project under Section 90-4-1307, Montana Code Annotated (the “PACE Act”). The terms of the Assessment are set out in the PACE Agreement between the Local Government and Property Owner and are summarized in Exhibit B attached hereto and made a part hereof by reference. The Assessment will constitute a lien against the Property with the same priority status as taxes collected under Title 15, Chapter 16, Montana Code Annotated..

WHEREAS, the PACE ACT requires that the Lender provide written consent to the Assessment prior to the Property Owner and Local Government executing the PACE Agreement.

WHEREAS, as certified in the Certificate of Authority attached hereto as Exhibit C, \_\_\_\_\_ as “Lender Representative” is authorized to execute this Lender Consent to PACE Assessment on behalf of the Lender.

### AGREEMENT

Section 1. Lender hereby consents to the Assessment and the PACE Agreement and agrees, for purposes of § 90-4-1305(b)(i), Montana Code Annotated, that Property Owner shall not be in default under the Loan Documents because it enters into the PACE Agreement or the

financing documents referenced therein, or because the Property is subject to the Assessment imposed against the Property pursuant to the PACE Agreement.

Section 2. This Lender consent is granted on the condition that Property Owner agrees that the amount of the Assessment shall not increase above the maximum amount specified in Exhibit B hereto without the consent of Lender.

Section 3. Except for the express agreement of the Lender contained in this Consent, Lender is not waiving any other right under the Loan Documents. Nothing contained in this Consent shall be construed to modify or amend any of the provisions of the Loan Documents.

[SIGNATURE LINES AND NOTARY BLOCK FOR LENDER AND PROPERTY OWNER ]

EXHIBIT A

[Description of real property]

EXHIBIT B

Assessment Payment Schedule

Assessment Total:

Payment Schedule:

Project Completion Date:

<b>Payment Date</b>	<b>Total Payment</b>	<b>Principal Paid</b>	<b>Interest Paid</b>	<b>Administration Fee</b>	<b>Remaining Balance</b>
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EXHIBIT C

[FORM OF CERTIFICATE OF AUTHORITY]

[Insert Lender's Letterhead]

Date \_\_\_\_\_

Re: Certificate of Authority for Execution of Lender Consent to PACE Assessment.

I, \_\_\_\_\_, am the [insert title] at [insert Lender]. I do hereby attest that [insert name of Lender representative who will execute Lender Consent] holds the position of [insert position title] at [insert Lender name] and in her/his capacity as [insert title] is authorized to enter into a Lender Consent to PACE Assessment as required by Section 90-4-1305(3)(b)(i), Montana Code Annotated.

[INSERT SIGNATURE LINE AND NOTARY BLOCK FOR SIGNATORY].



## Appendix H: Model Local Government Resolution of Intent

**Resolution No. \_\_\_\_\_**

### [NAME CITY/NAME COUNTY] RESOLUTION OF INTENT TO ESTABLISH A [CITY/COUNTY] PACE PROGRAM

WHEREAS, The 67th Regular Session of the Montana Legislature enacted the Commercial Property Assessed Capital Enhancement Act of Montana, Montana Code Annotated, Title 90, Chapter 4, Part 13 (the “PACE Act”), which allows the governing body of a local government, including a [City/County], to designate an area of the territory of the local government as a district within which an authorized local government official and the record owners of a privately owned commercial or industrial facility, covered multifamily housing accommodation as defined in 49-2-305(6), MCA, or agricultural property may enter into written contracts to impose assessments on the property to repay the financing by the owners of Energy Conservation Projects as defined in Section 90-4-1302(5), MCA; and

WHEREAS, the installation or modification by property owners of qualified Energy Conservation Projects in [City/County] will further the goals of increasing economic efficiency and energy conservation without cost to the public; and

WHEREAS, the [City Council/Commissioners Court] finds that financing Energy Conservation Projects through contractual assessments (“PACE financing”) furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, and conserving natural resources; and

WHEREAS, the PACE Act designates the Montana Facility Finance as state-wide administrator of projects utilizing PACE financing; and

WHEREAS, the [City Council/Commissioners Court], subject to the public hearing scheduled as provided below, at which the public may comment on the proposed program and the report issued contemporaneously with this resolution, finds that it is convenient and advantageous to establish a program under the PACE Act and designate the entire geographic area within the [City/County]’s jurisdiction as a district within which a designated [City/County] representative and the record owners of qualified real property may enter into PACE financing arrangements.

THEREFORE, be it resolved by the [City Council/Commissioners Court] of [City/County] that:

Section 1. [City/County] intends to make contractual assessments to repay PACE financing for qualified Energy Conservation Projects available to owners of a commercial or industrial facility, covered multifamily housing accommodation as defined in 49-2-305(6), MCA, or agricultural property. The program is to be called [City/County] Commercial Property Assessed Capital Enhancement (“[City/County] PACE”).

Section 2. The following two types of projects are qualified projects for PACE financing that may be subject to such contractual assessments:

1. “Energy conservation measures”: means a permanent cost-effective energy improvement fixed to real property, including new construction, and intended to decrease energy or water consumption and demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature. The exemplary list of energy conservation measures codified at Section \_\_\_\_, MCA, is incorporated by reference herein.
2. “Renewable Energy System”: means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more forms of renewable energy to generate electricity or to reduce the use of nonrenewable energy. The term includes a biomass stove but does not include an incinerator or a digester. “Renewable energy” has the meaning provided in 15-24-3102, MCA.

Section 3. The boundaries of the entire geographic area within [City/County]’s jurisdiction are the boundaries of the district where PACE financing and assessments can occur.

Section 4. Financing for qualified projects under the PACE program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with [City/County]’s representative to service the assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to contracts executed between the lenders and the owners. The lender contracts will provide that [City/County] will maintain and continue the assessments for the benefit of such lenders and enforce the assessment lien for the benefit of a lender in the event of a default by an owner. [City/County] will not, at this time, provide financing of any sort for the PACE program.

Section 5. The Montana Facility Finance Authority will serve as an independent third party Program Administrator on the behalf of [City/County] pursuant to its Montana Commercial Property Assessed Capital Enhancements Program Guidelines available for inspection at [insert website] (hereinafter the “MFFA CPACE Program Guidelines”). The MFFA CPACE Program Guidelines are incorporated in this resolution and made a part hereof for all purposes.

Section 6. The [City Council/County Commissioners] will hold a public hearing on the proposed PACE program and report on [date] at \_\_\_\_\_m. in the [City Council Room/County Commissioners Room], [address].

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

# Appendix I: Model Local Government Resolution Establishing a PACE District

**Resolution No. \_\_\_\_**

## [NAME CITY/NAME COUNTY] RESOLUTION ESTABLISHING A [CITY/COUNTY] PACE PROGRAM

WHEREAS, The 67th Regular Session of the Montana Legislature enacted the Commercial Property Assessed Capital Enhancement Act of Montana, Montana Code Annotated, Title 90, Chapter \_\_\_\_ (the “PACE Act”), which allows the governing body of a local government, including a [City/County], to designate an area of the territory of the local government as a district within which an authorized local government official and the record owners of a privately owned commercial or industrial facility, covered multifamily housing accommodation as defined in 49-2-305(6), MCA, or agricultural property may enter into written contracts to impose assessments on the property to repay the financing by the owners of Energy Conservation Projects as defined in Section \_\_\_\_\_, MCA; and

WHEREAS, the installation or modification by property owners of qualified Energy Conservation Projects in [City/County] will further the goals of increasing economic efficiency and energy conservation without cost to the public; and

WHEREAS, the [City Council/Commissioners Court] finds that financing Energy Conservation Projects through contractually agreed to special assessments (“PACE financing”) furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, and conserving natural resources; and

WHEREAS, the [City Council/Commissioners Court] adopted a Resolution of Intent to establish a PACE program for [City/County] on [Date], including a reference to the MFFA Program Guidelines prepared as required by Section \_\_\_\_ of the PACE Act and made the report available to the public via a link to the MFFA website;

WHEREAS, the public hearing required by Section \_\_\_\_ of the PACE Act at which the public could comment on the proposed program, including the MFFA Program Guidelines available for public inspection as mentioned above occurred [date and location] for [City/County]; and

WHEREAS, pursuant to the PACE Act, the [City Council/Commissioners Court] will delegate the administration of the [City/County] PACE program to the Montana Facility Finance Authority (the “MFFA”) (the “Authorized Representative”) that can administer the program at no cost to the [City/County]. Administration by the AUTHORITY will enable the program to be administered without use of [City/County] resources, will assure the objectives of impartiality and confidentiality of owner information, and will be convenient and advantageous to [City/County].

NOW THEREFORE, be it resolved by the [City Council of NAME/Commissioners of NAME County] that:

Section 1. Establishment of Program. [City/County] hereby adopts this Resolution Establishing the [City/County] PACE Program and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to [City/County] and its citizens. The program will be called [City/County] Commercial Property Assessed Capital Enhancement ([City/County] PACE”) and is herein called “the Program.”

Section 2. Assessments. [City/County] will, at the property owner’s request, impose contractually agreed to special assessments on the property to repay PACE financing for Energy Conservation Projects available to the record owners of a privately owned commercial or industrial facility, covered multifamily housing accommodation as defined in 49-2-305(6), MCA, or agricultural property.

Section 3. Qualified Projects. The following two types of projects are qualified Energy Conservation Projects for PACE financing that may be subject to such assessments:

3. “Energy conservation measures”: means a permanent cost-effective energy improvement fixed to real property, including new construction, and intended to decrease energy or water consumption and demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature. The exemplary list of energy conservation measures codified at Section \_\_\_\_, MCA, is incorporated by reference herein.
4. “Renewable Energy System”: means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more forms of renewable energy to generate electricity or to reduce the use of nonrenewable energy. The term includes a biomass stove but does not include an incinerator or a digester. “Renewable energy” has the meaning provided in 15-24-3102, MCA.

Section 4. District. The boundaries of the entire geographic area within [City/County]’s jurisdiction are included in the boundaries of the district where PACE financing and assessments can occur.

Section 5. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the Authority to service the debt through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or

through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. [City/County] will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. [City/County] will not, at this time, provide financing of any sort for the PACE program.

Section 6. Authorized Representative. The Authority will be designated as the Authorized Representative with authority to enter into written contracts with the record owners of real property in [City/County], to provide notice of assessment levies imposed by the [City/County] to the County assessor pursuant to the PACE Act to repay the financing of qualified projects on the owners' property, enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments, and to receive assessment funds from the [City/County] for the purpose of paying debt service due on such third-party financings secured by the assessments. The [City Manager/County Administrator] or his/her designee will be the liaison with the Authorized Representative.

Section 7. Enforcement. The [City/County] will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.

Section 8. Amendment of Program. The [City Council/County Commissioners] may amend the Program by resolution adopted after public comment at a properly noticed regular public meeting.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

## Appendix J: Borrower Acknowledgement of Risk and Certification as to Montana CPACE Programmatic Requirements

I, \_\_\_\_\_ (“Property Owner”), do hereby acknowledge and certify as follows:

1) That I have read and understood the following legal documents and have had the opportunity to obtain independent legal counsel regarding the same:

- a. The COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENT (“CPACE”) OWNER CONTRACT (“Owner Contract”) made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, Montana (“Local Government”), and \_\_\_\_\_ (“Property Owner”).
- b. THE COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENT (“CPACE”) LENDER CONTRACT (the “Lender Contract”) made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (“Local Government”) and \_\_\_\_\_ (“Lender”).
- c. NOTICE OF CONTRACTUAL ASSESSMENT LIEN PURSUANT TO COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENT ACT OF MONTANA

2) That the energy conservation measures financed via a third-party financing pursuant to the legal documents enumerated in Section 1 (the “CPACE Loan”) above do constitute permanent cost-effective energy improvements fixed to real property of which I am the record owner.

3) That the cost-effectiveness estimates of the financed energy conservation measures are based on current good faith estimates only and that the failure of such cost savings to materialize, in whole or in part, will in no way vitiate, void, annul, or mitigate my obligation to pay when due the semi-annual installments of the Assessments levied for purposes of repaying the CPACE Loan.

4) I understand that my only opportunity to cancel the Owner Contract was within three business days of signing the Owner Contract and do hereby represent that no such cancellation was intended by me nor did any such cancellation in fact occur. I acknowledge that the Owner Contract is now fully operative and binding on me.

5) I have had the opportunity to review and present any questions to staff of the Montana Facility Finance Authority (the “Authority”) regarding the CPACE Program Plan and

Guidelines. I understand how these documents effect my legal rights and interests and have no further questions regarding them.

6) I am entering into the CPACE Loan based on my own independent determination that such CPACE Loan constitutes an economically beneficial financial arrangement. In reaching this decision I have not relied on any representations of the Authority or the Local Government as to economic benefit and have sought independent advice to the extent I have deemed it reasonably necessary.

7) There is no information of which I am aware which would in any way preclude the energy conservation measures to be financed by the CPACE Loan from qualifying under the CPACE Program Plan or CPACE Program Guidelines.

I declare under penalty of perjury and under the laws of the State of Montana that the foregoing is true and correct.

DATED this \_\_\_\_ day of \_\_\_\_, 20\_\_, in \_\_\_\_\_, Montana.

\_\_\_\_\_  
[Property Owner]