

# Montana Commercial Property Assessed Capital Enhancements Program Guidelines



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## Program History

In 2021, Governor Greg Gianforte signed into law the Commercial Property-Assessed Capital Enhancements Act of Montana (PACE Act), which codified in MCA 90-4-13 authorized the creation of a Commercial Property-Assessed Capital Enhancements (C-PACE) program to be administered by the Montana Facility Finance Authority. This C-PACE program, now known as the Last Best PACE Program, went into effect January 1, 2022.

## About the Authority

The 2021 legislative session authorized the Montana Facility Finance Authority (“MFFA” or the “Authority”) to become the state-wide administrator of the Commercial Property-Assessed Capital Enhancements or “C-PACE” program. The C-PACE program qualifies projects eligible for private sector financing through low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits for private sector owners of commercial, industrial, non-profit, agricultural, and multi-family properties with four or more dwelling units.

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 Last Best PACE 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’s primary role is to provide 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 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

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

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## Program Overview

**Note:** Defined terms are Capitalized and can be found in [Appendix A: Definitions](#).

Last Best PACE is an innovative program that qualifies projects eligible for private sector financing through 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 private sector owners of commercial, industrial, non-profit, agricultural, and multi-family properties with four or more dwelling units.

C-PACE loans made under the Last Best PACE Program are secured by a tax assessment on the property that is voluntarily imposed by the Record Owner and may be amortized over the projected life of the energy improvements. As a result, these improvements can generate neutral, or even positive cash flow upon installation.

C-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 to the next Record Owner. As a result, the program helps 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 as Program Administrator, established the Last Best PACE Program to encourage private sector investment in energy efficiency and water conservation. The Last Best PACE program is offered to Record Owners on a strictly voluntary basis and loans are privately financed.

## Eligible Property Requirements

All private sector owners of commercial, industrial, non-profit, agricultural, and multi-family properties with four or more dwelling units may voluntarily participate in the Last Best PACE Program.

Properties must be located in a Montana city, county, town, or a consolidated city-county that has established or will establish, a C-PACE District. The property must be on the property tax rolls (or eligible to be placed on the property tax rolls) and have a property tax identification number within the C-PACE District.

The properties must:

- Be current on all taxes
- Be current on mortgage payments
- Have no “mechanics” or similar liens against the property
- Not be involved in any bankruptcy proceedings

Properties with multiple Parcel IDs require additional documentation and underwriting and Energy Assessments for these projects must include:

- Description of the method of spreading the annual installment between the parcels;
- List of lots, blocks, tracts, and parcels of land in the C-PACE Project; and
- Amount assessed on each parcel

The Last Best PACE Program reserves the right to deny properties with multiple Parcel IDs if any one of the Parcel IDs cannot support a prorate portion of a C-PACE Project

Ineligible Property types are as follows:

- Residential single family (1–3 units)
- Residential condominiums
- Property owned by a local, state, or federal government
- Property owned by a homeowner’s or condominium association

## Eligible C-PACE Project Types

### 1. Existing-Building 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 Energy Conservation Project (ECP) will be measured. Existing conditions may be determined based on nameplate efficiency ratings of currently installed equipment. Alternatively, the Qualified 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.

### 2. New Construction

New construction Energy Conservation Projects, unlike existing-building retrofits, do not benefit from a history of pre-improvement energy usage data from which baseline energy usage can be established. Without the benefit of this baseline level of energy and water usage data, additional Energy Assessment requirements are necessary.

Energy Conservation Projects within 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 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 or equivalent ASHRAE standard established in the current State of Montana building code.

### 3. Substantial Renovation/Adaptive Reuse of Vacant or Underutilized Buildings

For Energy Conservation Projects that require substantial renovation or adaptive reuse of a vacant or underutilized building, the baseline for the purposes of establishing energy savings can be set based upon the level of the existing equipment and building conditions.

Historic utility bills may be provided if available. Otherwise, the Energy Assessment for this project type should include all other component requirements for existing building retrofit improvements, 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.

#### **4. Retroactive Improvements**

Previously completed installations of Energy Conservation Projects may be eligible for retroactive C-PACE financing. Retroactive improvement financings are C-PACE Financings that close after the Energy Conservation Project was previously completed by the Record Owner. Applicants with retroactive improvements may apply to Last Best PACE to be approved for C-PACE Financing.

Retroactive improvements are subject to the following additional requirements:

- Must occur within thirty-six (36) months of the time elapsed between the later of the completion of the installation/modification or the certificate of occupancy for the Eligible Property and application of the C-PACE Financing, unless otherwise approved by the program.
- The term of the C-PACE Financing will be reduced to account for any of the Energy Conservation Project's life that has elapsed between the time of installation/modification and the close of the retroactive C-PACE financing. For example, if a retroactive C-PACE financing is funded one year after the later of either the completion of the installation/modification or the certificate of occupancy, the eligible term of the retroactive C-PACE financing will be reduced by one year.

#### **Required Documentation for Retroactive Improvements Financing:**

Verification is required to establish prior conditions (baseline) and describe the Energy Conservation Project. The Energy Assessment for a retroactive improvement shall include additional documentation that provides evidence of the Energy Conservation Project that is the subject of the retroactive C-PACE financing, as follows:

- Completion date for the Energy Conservation Project(s) that is subject to the retroactive C-PACE financing
- Make and model of equipment replaced and description of the baseline usage
- Documentation that provides evidence of equipment installed prior to replacement
- Make and model of equipment that is the subject of the retroactive improvement
- Documentation that provides evidence of installation/modification of equipment comprising the Energy Conservation Project(s)

New construction projects that do not access C-PACE Financing until after the completion of the short-term construction period, may be considered a retroactive improvement.

New construction projects that accessed C-PACE Financing earlier in the construction or conversion process must meet the new construction requirements, as outlined above.

#### **5. Renewable Energy Improvements**

For renewable energy improvement projects, a Renewable Energy Feasibility Study must be submitted by the Record Owner in addition to the Energy Assessment. At a minimum, the Renewable Energy Feasibility Study should address the following:

- Site ambient conditions
- Location for the Renewable Energy Improvement
- 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 Last Best PACE Program recognizes that developers and installers of Renewable Energy Improvements may be able to provide a qualifying Renewable Energy Feasibility Study to a Record Owner without engaging a Qualified Energy Engineer, as described in the Last Best PACE Contractor section of these Guidelines. If this is the case, the name, company name, and credentials of the developer/installer shall be included in the Energy Assessment.

## **6. Electric Vehicle Charging Systems**

An assessment of the benefits of the Electric Vehicle Charging System must be submitted by the Record Owner. This assessment must include but is not limited to:

- Description of the proposed Electric Vehicle Charging System
- Projected energy consumption of the Electric Vehicle Charging System
- Assessment of utility tariffs and interconnections issues
- A summary of the estimated implementation cost for the measure, the simple payback period in years, and the simple return on investment
- 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.

The Last Best PACE Program recognizes that developers and installers of Electric Vehicle Charging Systems may be able to provide a qualifying Renewable Energy Feasibility Study to a Record Owner without engaging a Qualified Energy Engineer, as described in the Last Best PACE Contractor section of these Guidelines. If this is the case, the name, company name, and credentials of the developer/installer shall be included in the Energy Assessment.

## Energy Assessment Requirements

The Energy Assessment for a C-PACE Project must follow a methodology consistent with standard ASHRAE guidelines, be calculated using generally accepted engineering calculations or a U.S. Department of Energy-approved building energy modeling software, and address the following components:

- Written description of the proposed Energy Conservation 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 Energy Conservation Measure (ECM) that is part of the Energy Conservation Project
- The total project capital cost is required for each ECM or for packages of ECMs if interactive effects between the ECMs make itemized costs impractical
- Projected annual energy and water bill savings and operating cost assumptions
- 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.

## Cost Effectiveness

An Energy Conservation Project must be cost effective to qualify for C-PACE Financing. The Last Best PACE Program considers a cost-effective project as one that benefits the Property Owner by ensuring the investment provides good value (for the money, for the project). This value is typically demonstrated by the total cost of financing being exceeded by the projected monetary savings over the life of the improvement.

The cost-effectiveness determination examines the value of energy and water utility bill savings, operational savings, additional revenue, rebates, renewable incentives, tax credits, and other savings and revenue mechanisms with respect to the value of the costs of purchasing and installing the improvements and any financing costs and associated fees for the Energy Conservation Project.

To qualify as C-PACE eligible, projects involving equipment replacement or installation must be above base Montana code. For the cost-effectiveness determination, the incremental savings resulting from the above-code measures must be greater than the incremental costs for the above-code measures. For example, if the incremental savings above-code for an HVAC system is



greater than the costs for above-code measures, the full cost of the HVAC system is C-PACE eligible.

Estimates of savings and costs must be adequately documented in the Energy Assessment to substantiate the values, which must be validated by the required Independent Third-Party Reviewer. The Last Best PACE Program reserves the right to request additional documentation to verify estimated costs and savings.

## Qualifying Equipment

Types of equipment that may qualify as part of an Energy Conservation Project:

- 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

Products or devices that are not permanently fixed to real property are ineligible to be part of an Energy Conservation Project. Examples 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 Project as described in the Energy Assessment. For projects that include multiple ECMs, the term of a C-PACE Financing should be the weighted average of useful life.

## Last Best PACE Contractors

Last Best PACE seeks to facilitate good, locally based jobs for contractors and their employees. The Last Best PACE Program requires C-PACE Projects be completed by qualified, reputable

contractors with relevant demonstrated experience. Within a C-PACE Project there are three processes that involve contractors:

- Energy Assessments
- Project Installations
- Independent Reviews

At a minimum, the general/lead contractor working on a C-PACE Project must be an approved Registered Contractor with the Last Best PACE Program. Registered general/lead contractors are strongly encouraged to be knowledgeable about the Last Best PACE Program.

### **Registered Contractor Application Process**

- Contractor submits the Contractor Registration Form directly from [www.LastBestPACE.com](http://www.LastBestPACE.com)
- Last Best PACE Program reviews the registration form to make final determination
- Contractor is notified of final determination

If approved, the contractor is added to the Registered Contractor list on the program's website.

### **Required Contractor Criteria:**

- Contractor or Company is registered with the Montana Secretary of State and licensed to do business in Montana
- Contractor or Company is not disbarred from working in Montana
- Contractor or Company is bonded
- Contractor or Company carries a minimum of \$1 million in liability insurance coverage
- Contractor or Company provides appropriate workers' compensation insurance coverage
- Contractor or Company has the following required licenses and certifications:
- Contractors or Companies performing work in the below referenced areas must have one or more employees assigned to the project with one of the following:
  - **HVAC**
    - Masters Plumber's 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

### **Required Certifications for Energy Engineer Contractors (Energy Assessments and Independent Reviews)**

Registered Contractors must be Qualified Energy Engineers to complete Energy Assessments or Independent Reviews for the Last Best PACE Program. A Qualified 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 Last Best PACE Program to conduct Energy Assessments.

### **Requirements for Project Installation Contractors**

Last Best PACE requires that C-PACE Projects 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 the Last Best PACE Program and certify that they hold all of the required licenses to install the applicable ECMs. Upon acceptance of the program terms and conditions and approval by the program, the installation contractor will become a Registered Contractor in the Last Best PACE Program.

Note: Last Best PACE reserves the right to modify contractor qualifications. Contractors will be notified of the new requirements.

## **Last Best PACE Process**

### Prior to Application

To start the process, the Record Owner will work with a Qualified Energy Engineer to conduct an Energy Assessment of the Eligible Property. The Energy Assessment for a C-PACE Project must address the components listed under the Energy Assessment Requirements section outlined in these guidelines. If the Record Owner requires a referral for a Qualified Energy Engineer, the Authority can provide a list.

### Application

Once the Energy Assessment is complete and supports the Cost Effectiveness of the Energy Conservation Project, the Record Owner can submit an Application, available at [www.LastBestPACE.com](http://www.LastBestPACE.com).

Based on the Application, the Last Best PACE Program may issue a preliminary communication indicating that, subject to verification of all requirements, the proposed project appears to meet program requirements.

### Engage with Registered Contractor for Energy Assessment

Based on the program's preliminary letter, the Record Owner may now engage with a contractor,

if they have not already done so (see Prior to Application, above). The Last Best PACE Program can provide a listing of Registered Contractors that have met program criteria (found in the Last Best PACE Contractors section of these Guidelines), which the Record Owner may wish to contract with for their C-PACE Project. This list is provided as a service, however if a Record Owner works with another contractor, please remember that a contractor must become a Registered Contractor with the Last Best PACE Program.

Note: Under MCA 90-4-1305, the Contractor must use a skilled and trained workforce. In addition, projects financed 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.

#### Engage with Registered Contractor for Independent Review

Once design of the project and a final calculation of the expected costs and savings is completed, a review by a qualified Independent Reviewer must occur to verify the Energy Conservation Project's Cost Effectiveness. The Independent Review must be conducted by a licensed engineer with the relevant professional certifications that is a Registered Contractor with the Last Best PACE Program. The Independent Reviewer is chosen by the Record Owner and cannot have a financial interest in the C-PACE Project. Alongside reviewing the Energy Assessment, the Independent Reviewer will include additional considerations of savings and costs as 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 financing in replacement of mezzanine debt or preferred equity.

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

- The cost of the Energy Conservation Project, which 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 Last Best PACE Program reserves the right to request additional documentation to verify estimated costs and savings.

#### Obtain Mortgage Lender Consent

The Record Owner shall obtain written consent in a form substantively similar to that of the Model Consent Agreement ([Appendix J](#)) 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 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 Last Best PACE Program as well as the information from the Independent Reviewer and secure a commitment from an Eligible Lender, as described in that section of these Guidelines. Under statute, the assessment payment period cannot exceed the useful life of the project that is the basis for the loan and assessment. The financing package may include soft costs such as program fees, planning, and design costs, as well as the cost of the Energy Assessment.

### Loan Closing Document List

Pre-closing documents that must be submitted (may occur following C-PACE Approval) prior to the close of the C-PACE Financing, are as follows:

- Contract between Local Government and Record Owner ([Appendix G](#))
- Contract between Local Government and Lender ([Appendix H](#))
- PACE Assessment Lien ([Appendix I](#))
- Consent Agreement ([Appendix J](#))
- Borrower Acknowledgement of Risk and Certification as to Montana C-PACE Programmatic Requirements ([Appendix M](#))

### C-PACE Financing Closing

Prior to closing on the C-PACE Financing, the Record Owner is required to provide to the Last Best PACE Program the following documentation:

- The Independent Reviewer's report 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 confirming there are no delinquent taxes, special assessments, or water or sewer charges due on the real property;
- Documentation confirming there are no delinquent assessments on the real property under any Commercial Property-Assessed Capital Enhancements program; and
- The Borrower Acknowledgement of Risk and Certification as to the Last Best PACE Programmatic Requirements certifying the Record Owner understands and accepts the terms of the contract and financing.

With the Application and all supplemental documentation, the Last Best PACE Program will make a final 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.

Upon the Last Best PACE Program’s determination of compliance, the C-PACE Lender can then notify the program and the Local Government that the Record Owner has demonstrated the ability to fulfill the financial obligations to be repaid through contractual assessments.

#### File Assessment

Before entering a contract with a Record Owner under the 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 no delinquent assessments on the real property under a Commercial Property-Assessed Capital Enhancements program are due.

Once the program requirements are met, the Local Government will enter into a written contract with the Record Owner. The contract will impose a property tax assessment on the Record Owner’s Eligible Property to repay the Lender’s financing of the Energy Conservation Project. The Lender will file a “Notice of Contractual Assessment Lien,” in substantially the form in [Appendix I](#) in the Official Public Records of the County where the Eligible Property is located, as notice to the public of the assessment. 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.

The execution of the written contract between the Local Government and the Record Owner and recording of the PACE Assessment Lien ([Appendix I](#)) incorporate the terms of the financing documents executed between the Record Owner and 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 H](#) 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 directly purchase the equipment and materials for the Energy Conservation Project 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 Conservation Project is installed.

#### Verification Review

As per MCA 90-4-1305, after an Energy Conservation Project is completed, the Last Best PACE Program requires the contractor who completed the project to submit written verification that it 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 code. If the design needs modification, the changes must be reviewed and approved by the Independent Reviewer. The verification report conclusively establishes that the improvement is an Energy Conservation Project, and the project is qualified under the Last Best PACE Program.

#### 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 Last Best PACE Program to ensure that the changes to the project remain consistent with the requirements as set forth in the Program Guidelines. The Record Owner shall provide the following documentation:

- Narrative description of the change in project scope and purpose for such a change;
- Revised project budget to account for changes in project cost;
- A letter from a Qualified Energy Engineer certifying that the revised improvements remain eligible for C-PACE Financing; and
- Approval of the change by the C-PACE Lender.

### Loan Repayment

If applicable, the Local Government will deduct the fee for its services and remit the Record Owner's assessment payments to the Authority for disbursement to the Lender to repay the debt. The C-PACE Lender has 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, the Local Government and the Last Best PACE Program are notified in writing of the assignment or transfer at least 30 days before the next installment is due according to the schedule for repayment of the debt. This notification must include the address to which payment of the future installments should be mailed; and
- The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of the Record Owner's obligations under the C-PACE Lender contract.

## Eligible Lenders

C-PACE Projects are financed by lenders in an open market model. The Last Best PACE Program relies on private capital to finance projects and does not obligate the State of Montana, the Authority, the Last Best PACE Program, or the Local Government to support or guarantee funding. The selection of the C-PACE Lender is up to the Record Owner.

Participation in the Last Best PACE Program requires the Record Owner to work with an Eligible Lender to negotiate the terms of the C-PACE Financing. C-PACE Lenders extend loans to finance Energy Conservation Projects. Financing documents executed between the Record Owners and C-PACE Lenders impose a contractual assessment on Eligible Property to repay the Record Owner's financing of the Energy Conservation Project. The C-PACE Lenders ensure the Record Owners demonstrate the financial ability to fulfill the financial obligation to be repaid through contractual assessments.

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

- A federally insured depository institution, such as a bank, savings bank, savings and loan association, and federal or state credit union;
- An insurance company authorized to conduct business in one or more states;
- A Registered Investment Company (RIC), registered Business Development Company

- (RDC), or SBA Small Business Investment Company (SBIC);
- A publicly traded entity; or
  - A 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;

Eligible Lenders participating in the Last Best PACE program must be 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.

Emphasizing predictability and transparency, the Last Best PACE program does not allow balloon payments or any index-reliant rate adjustments for C-PACE loans.

C-PACE loans must be either:

- fixed rate for the full term of the financing, or
- may have a stepped-up rate adjustment (needs to be disclosed up front and specifically outlined in the loan documents, thereby establishing a consistent and stable repayment structure and amount)

## Eligible Local Government C-PACE Districts

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

Local governments are not responsible for and do not authorize participation in individual C-PACE Projects. The Last Best PACE Program will coordinate and support the efforts to assist each local government that wishes to opt-in to the program. Local governments interested in C-PACE should contact the program directly.

In addition to the benefits the Record Owner receives by implementing energy-and water-saving measures, local governments also receive direct and indirect benefits, such as:

- Enhancement of the value and efficiency of existing buildings;
- Boost to the local economy by creating new job opportunities for laborers, new business opportunities for contractors, engineers, commercial lenders, professionals, equipment vendors, and manufacturers;
- Increases to business retention and expansion in the C-PACE District by enabling cost effective energy and water saving updates to existing properties;



- Increases to commercial building values which increases taxable property values;
- Improves productivity through optimized energy usage; and
- Better enables local governments to meet their water conservation goals.

The Last Best PACE Program is designed to be self-sustaining and requires minimal support from the local government. Furthermore, because C-PACE is tax neutral, it achieves all 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 K](#)) that includes:
  - a. a statement of intent to establish a C-PACE 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 MCA 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 MCA 90-4-1305; and
3. Adopt a Resolution Establishing a C-PACE Program ([Appendix L](#)) 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 MCA 90-4-1305. The resolution may incorporate the program plan or an amended version of the 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 local government with C-PACE Lenders; and
  - d. Identification of an official authorized to enter into a program contract on behalf of the local government with Record Owners.

## Program Fees

The Last Best PACE Program 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.

### Origination Fee

The Origination Fee is paid to the Last Best PACE Program at or prior to the C-PACE Financing closing date. This fee represents an up-front administration fee that equals one and one quarter percent (1.25%) of the C-PACE Financing amount. The minimum Origination Fee shall be \$1,000, with no set maximum fee amount\*. The Origination Fee may be capitalized into the C-PACE Financing amount for the C-PACE Project.

\*Note: MFFA reserves the right to negotiate a maximum origination fee amount on an individual project basis.

### **Administrative Fee**

For each current C-PACE Project, an Administrative Fee of one percent (1.0%) of the annual payment, up to an annual maximum of \$3,000, will be charged each year until the assessment is paid in full. This will be calculated and included in the project amortization schedule. Upon receipt of the funds from the Local Government, the Last Best PACE Program will deduct the fee prior to remitting the loan payment to the C-PACE Lender.

The Origination and Administrative fees outlined above 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 Last Best PACE Program documentation, request a legal opinion from program counsel or require other time and resource intensive review of a transaction, the Record Owner shall be responsible for covering such Last Best PACE Program expenses at cost. Prior to a C-PACE Financing closing, evidence that such expenses will be paid before the closing is required. These specialized professional services expenses may be paid out of the proceeds of the C-PACE Financing.

## **Qualifying Expenses**

The following costs may be rolled into the C-PACE Financing Agreement:

- Energy audits/renewable energy studies
- 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
- Other costs the Last Best PACE Program determines to be reasonable

Self-installation costs do not qualify, and costs must be considered reasonable. The Last Best PACE Program evaluates costs on a case-by-case basis and may require additional documentation to validate reasonability.

## List of Appendixes

Appendix A – Definitions

Appendix B – C-PACE Project Map

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Appendix M – Borrower Acknowledgement of Risk and Certification as to Montana C-PACE Programmatic Requirements

## Appendix A: Definitions

**Applicant** – Any Record Owner or their authorized agent who submits a Last Best PACE application with the intent to utilize C-PACE Financing to fund a C-PACE Project.

**Application** – The form found on the program’s website: [www.LastBestPACE.com](http://www.LastBestPACE.com), submitted by an Applicant requesting participation in the Last Best PACE Program.

**ASHRAE** – The acronym for American Society of Heating, Refrigerating, and Air-Conditioning Engineers

**Cost Effectiveness** – This determination is made by examining the value of energy and water bill savings, operational savings, additional revenue, rebates, renewable incentives, tax credits, and other savings and revenue mechanisms with respect to the value of the costs of purchasing, installing, and financing the Energy Conservation Projects. The Energy Assessment and Independent Third-Party Review must support this determination.

**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. A local government may create more than one district in its jurisdiction.

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

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

**C-PACE Lender** – An organization that meets the participation requirements set forth in the Eligible Lenders portion of these Guidelines and that funds a C-PACE Financing.

**C-PACE Project** – One or more ECM(s) installed on real property that meet the requirements set forth in these Guidelines.

**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 multi-family properties with four or more dwelling units.

**Energy Assessment** – An assessment of the energy efficiency, water conservation, or renewable energy measures proposed for the C-PACE Project conducted by a Qualified Energy Engineer.

Energy Conservation Measure (ECM) – 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 used energy technology to generate electricity, provide thermal energy, or regulate temperature.

Energy Conservation Project – The installation or modification of an Energy Conservation Measure or the acquisition, installation, or improvement of a Renewable Energy System.

IECC – The acronym for International Energy Conservation Code

Independent Review – A review verifying the feasibility of the project design and expected Cost Effectiveness and verifying that the project was successfully completed.

Independent Reviewer – A qualified engineer who has no financial interest in the project who completes the Independent Review.

Last Best PACE Program – Montana’s statewide C-PACE Program administered by the Authority.

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

MFFA – The acronym for Montana Facility Finance Authority, the Program Administrators of the Last Best PACE Program, referred to 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.

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

Parcel ID – A unique number assigned to parcels of property by the tax assessor of the property jurisdiction which is used for record-keeping and tax purposes of each property.

Program Fees – A one-time Origination fee paid to the Authority at or prior to the C-PACE Financing closing date, and an ongoing annual Administration fee collected by the Authority via the repayment process.

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

Qualified Energy Engineer – A professional holding qualifications set forth in these guidelines who is a reputable contractor with demonstrated experience relevant to the C-PACE Project that is able to perform the work according to plans, specifications, and the requirements detailed in these guidelines.

Record Owner – The person or persons possessing the most recent fee title as shown by the records of the county clerk and recorder.

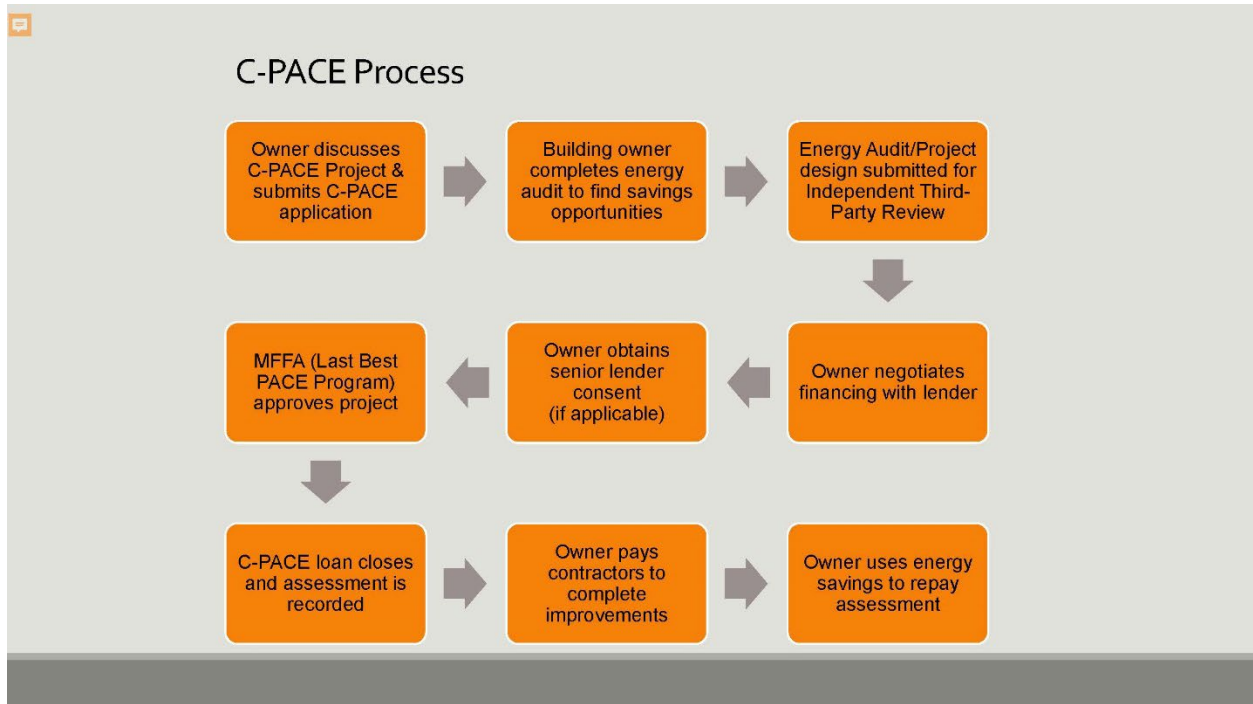
Registered Contractor - A Contractor of Company that is a Qualified Energy Engineer that meets the requirements set forth in these guidelines that has submitted a Registered Contractor Application to the C-PACE Program that has been reviewed and approved for Registered Contractor designation.

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.

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

Renewable Energy System – 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.

## Appendix B: C-PACE Project Map



## Appendix C: 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.
- The Last Best PACE Program 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.
  - Is 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 D: 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 C-PACE funding eligibility.

### **Lighting (typical 2–3-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 3–5-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 3-5-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 3–5-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 2–8-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 5–10-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 3–5-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 2–4-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 feedwater
  - Inlet water for domestic hot water.

### **New Automated Building and HVAC Controls (typical 3–5-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 3–10-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 3–5-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 3–15-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 C-PACE 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 E: 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 F: Application

### Section 1 – Applicant Information

#### Applicant Primary Contact

Person to whom all communications will be directed

**Name**

**Title**

**Email**

**Phone**

**Organization**

**Mailing Address**

Address Line 1

Address Line 2

City

State

Zip

**Relationship of Primary Contact to Business**

## Property Legal Owner Name(s)

As they appear on the property tile

### Property Owners

Owner Name	Organization/Title
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

### Property Owner Type (Check one)

- Corporation
- LLC
- Nonprofit
- Trust
- Partnership
- Individual(s)/Joint Tenants/Common Property (not in trust)
- Other

### IRS Tax ID Number

### Business Name

### Legal Business Name (if different than Business Name)



## Section 2 - Property Information

### Property Physical Address

Address Line 1

Address Line 2

City

State

Zip

### Property Tax Assessor-Collector ID or Reference Number

### Property Type

- Commercial
- Multifamily (>3 units)
- Industrial
- Agricultural
- Other

### Enter Legal Description

### Is there currently a mortgage on the property?

- Yes
- No

## Section 3 - Owner Information

**Is owner(s) subject to any outstanding, unsatisfied judgements?**

- Yes
- No

**Is owner current with all taxes and assessments on property and has been for 3 years?**

- Yes
- No

**Is owner current on all debts secured by the property?**

- Yes
- No

**Is property title clear with no encumbrances?**

- Yes
- No

**Is property subject to any outstanding tax liens or notices of default?**

- Yes
- No

**Is owner(s) delinquent on other C-PACE assessments?**

- Yes
- No

**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**

## Section 4 - Proposed Project Details

### Brief Project Description

#### What stage of project development are you at?

- Beginning investigation, i.e. unsure of which property improvements to pursue
- Has a very specific set of desired property improvements
- Have had an energy audit conducted
- Have identified a contractor to implement the property improvements
- Have developed a detailed scope of work for the project
- Have identified what rebates or incentives are applicable to project
- Have approached existing mortgage holder to inquire about obtaining written acknowledgement for participation in the program
- Have identified which project investor will provide capital for the project

#### 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 - Total Project Cost

**Total Estimated Project Costs**

**Less: Preliminary Estimate of Rebates/Incentives**

**Less: Property Owner Contribution**

**Total Estimated PACE Financing Amount**

## Appendix G: 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 energy conservation projects 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. Property Owner has applied to Authorized Representative 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. Equal 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 received 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 equal 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 of 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. Equal 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 received 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 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 90-4-1304 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. Pursuant to Section 90-4-1305(4)(b) of the PACE ACT, this Owner Contract may be 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:

\_\_\_\_\_

By:

Name:

Title:

Address:

## Appendix H: 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 energy conservation projects on the owner’s property pursuant to the PACE Program.

C. Property Owner has applied to Authorized Representative 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 System”). The installation or modification of such [Energy Conservation Measure or Renewable Energy System] 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 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 Energy Conservation Projects. The Property, Energy Conservation Projects, 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 equal 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. Equal 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. If the [ select “energy conservation measure” or “renewable energy system”] is located on multiple parcels, the Assessment shall be allocated between each on a *pro rata* basis or as otherwise agreed to by the Property Owner and Lender, subject to approval by the Authorized Representative.

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 access to capital sufficient to fund the principal amount of the C-PACE loan as detailed in the Financing Document in full at the date of closing;
3. 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



4. 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. Standing to Enforce. Lender recognizes that the Authorized Representative shall have standing to initiate legal action to enforce any of the terms and conditions of this Agreement and shall be entitled to recover its attorney fees and costs in the event it is successful in any such action. This recognition does not in any way diminish the standing of other parties to bring legal claims on their own behalf.

Section 15. 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 16. 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 17. 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 18. 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 an “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 19. 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 I: Model C-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 energy conservation projects 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 “Energy Conservation Project”). The installation or modification of such Energy Conservation Measures or Renewable Energy Systems on the Property will be an “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 Energy Conservation Projects.

- V. The financing of such Energy Conservation Projects 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 equal 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 equal semi-annual installments of principal and interest set forth on Exhibit C 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 installments 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 Energy Conservation Projects 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**  
**ENERGY CONSERVATION PROJECTS**

**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 J: 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 K: 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 C-PACE Program Guidelines”). The MFFA C-PACE 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 L: Model Local Government Resolution Establishing a C-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 4 (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, 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 90-4-1306 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 90-4-1306 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, in equal semi-annual installments, 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:

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 90-4-1302, 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 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 M: Borrower Acknowledgement of Risk and Certification as to Montana C-PACE 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 (“C-PACE”) 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 (“C-PACE”) 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 “C-PACE 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 C-PACE 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 cancelation was intended by me nor did any such cancelation 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 C-PACE 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 C-PACE Loan based on my own independent determination that such C-PACE 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 C-PACE Loan from qualifying under the C-PACE Program Plan or C-PACE 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]