

MONTANA FACILITY FINANCE AUTHORITY
Board Meeting

Montana Facility Finance Authority Office
2401 Colonial Drive, Helena

December 8, 2021

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



MEMORANDUM

Montana Facility Finance Authority

Department of Commerce
2401 Colonial Drive, 3rd Floor
P.O. Box 200506, Helena MT 59620
(406) 444-0259

To: MFFA Board Members
From: Adam Gill, Seth Lutter & Monica Birlut
Date: December 1, 2021
Subject: MFFA Board Meeting Wednesday, December 8

Enclosed, please find board meeting materials for our upcoming MFFA Board Meeting:

December 7th:

Every year in December we host a board dinner to celebrate the many things the MFFA has accomplished. 2021 was so different so we are pleased to invite all of you to a dinner at Ristorante Bella Roma at 6:30 PM on December 7th (22 N Last Chance Gulch). If you would like to bring a guest, the more the merrier. Please let us know if you will be bringing someone so we can adjust the reservation. The MFFA cannot pay for the meals of guests

December 8th:

MFFA Board Meeting 10:00 AM at MFFA Office in the Large Conference Room.

We will have a photographer at 10:00 am to do a new board photo for the Annual Review.

We will discuss and vote on the C-PACE Program Plan and related Program Policy that is required by the C-PACE legislation to enact the program. Drafts of the Program Plan and Program Policy are attached for your consideration. A complete Program Guidelines will be available by end of business on Friday, December 3rd.

The meeting will include a legislative update, our usual review of reports and an executive session for my annual performance review. In addition, please bring your calendars so we can plan out our 2022 meetings.

Hotel, Reception and Dinner

- Hotel reservations have been made at the DoubleTree downtown (22 North Last Chance Gulch) for Mel, Matt, and Jade.
- Dinner will be at Ristorante Bella Roma at 6:30 PM. The restaurant is on the ground floor of the hotel.

ZOOM INSTRUCTIONS

<https://mt-gov.zoom.us/j/4064440259?pwd=Q3hESVo0d0NpTEk1bHA2eXVHdTRsdz09>

Meeting ID: 406 444 0259

Password: 845632

OR

Dial by Telephone: +1 (406) 444-9999

Meeting ID: 406 444 0259

Password: 845632

**MONTANA FACILITY FINANCE AUTHORITY
BOARD MEETING
MFFA Conference Room
2401 Colonial Ave, 3rd Floor
Helena, MT
December 8, 2020
10:00 A.M.**

MEETING AGENDA

10:00 BOARD PHOTO

10:30 I. CALL TO ORDER

- A. Roll Call**
- B. Approval of Meeting Minutes (10/21/2021)**

II. PUBLIC COMMENT on Board Related Items

III. GENERAL ADMINISTRATIVE

A. C-PACE Program Report

- 1. C-PACE Program Report for the Board
- 2. C-PACE Program Policy
- 3. Resolution No 21-14 Accepting the Report and Adopting the Policy

B. Financials

- 1. Budget -v- Actual
- 2. Revenue Graph
- 3. Reserve Balances
- 4. Staff Approved Loans & Grants

C. Miscellaneous

- a. Anticipated Financings
- b. 2022 Meeting Calendar

D. Executive Session - Executive Director Development Committee

Joining in person:

Jim Kerins, Managing Consultant – CMS

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MONTANA FACILITY FINANCE AUTHORITY
Board Meeting (Conference Call)
October 21, 2021
10:00 A.M.

MINUTES

BOARD MEMBERS

PRESENT:

Vu Pham, Chair (via phone)
Mel Reinhardt (via phone)
Paul Komlosi (via phone)
Kim Rickard
John Iverson (via phone)
Matt Thiel (via phone)

BOARD MEMBERS

ABSENT:

Jade Goroski

STAFF PRESENT:

Adam Gill, Executive Director (via phone)
Seth Lutter, Associate Director
Monica Birlut, Accountant

GUESTS:

Priscilla Needham, CFO – Billings Clinic (via phone)
Robyn Helmlinger, Bond Counsel – Orrick Herrington & Sutcliffe (via phone)

Steve Sohn, Financial Advisor – Kaufman Hall & Associates (via phone)
Mike Quinn, Underwriter – Bank of America (via phone)
Jeff Appel, Underwriter – RBC Capital Markets (via phone)
Bob Murdo, Authority Counsel – Jackson, Murdo & Grant (via phone)
Nathan Bilyeu, Authority Counsel – Jackson, Murdo & Grant
Jim Kerins, CMS Consulting

BOARD MEETING

CALL TO ORDER

Board Chair Vu Pham called the October 21, 2021 board meeting of the Montana Facility Finance Authority (the “Authority”) to order at 10:00 A.M. The meeting convened with all but one member of the Board present. Member Mel Reinhardt disclosed a direct conflict of interest on the financing before the Billings Clinic presentation and abstained from voting. Board Chair Pham disclosed a potential conflict of interest on the financing before the Billings Clinic presentation.

Minutes

Board Member Matt Thiel motioned to approve the August 18, 2021 board meeting minutes with amendments. Board Member Paul Komlosi seconded the motion which passed unanimously.

PUBLIC COMMENT

The meeting was opened for public comment. *No comments were received.*

FINANCINGS

Billings Clinic

Adam Gill, Executive Director of the MFFA, introduced Priscilla Needham, CFO – Billings Clinic, Robyn Helmlinger, Bond Counsel – Orrick Herrington & Sutcliffe, Steve Sohn, Financial Advisor – Kaufman Hall & Associates, Mike Quinn, Underwriter – Bank of America, and Jeff Appel, Underwriter – RBC Capital Markets. Board Chair Pham requested a motion for approval of the financing resolution. Member Kim Rickard motioned for approval of the financing. Member Thiel seconded the motion for approval of the financing resolution. Ms. Needham described the project which is a Bond for the refinancing of bonds and taxable debt for other projects. Ms. Needham described the payor mix and status of COVID relief funds. Mr. Appel described the plan of finance. At the conclusion of discussion, Board Chair Pham called for the vote on the motion which passed unanimously.

GENERAL ADMINISTRATIVE

Financials

Mr. Gill presented the Budget-v-Actual results and the Reserve Balances. Mr. Lutter discussed Staff Approved Loans and Grants and presented the Revenue Graph.

SPECIAL PURPOSE TOPICS

Strategic Planning

Jim Kerins, CMS Consulting, presented on MFFA's strategic planning document with its goals and objectives for the next two years.

Executive Director Development Committee

Mr. Kerins presented on the Executive Director Development Committee and provided a timeline of events for the next few months. Member Rickard, Board Chair Pham, Member Iverson were selected to be on the committee.

C-PACE Program Report

Mr. Gill presented the draft C-PACE Program Report and indicated that a final form document would be available in the December board meeting.

ADJOURN

Chair Pham adjourned the meeting at 11:42 A.M.

APPROVE: _____
Vu Pham, Chair

ATTEST: _____
Adam Gill, Executive Director

APPROVAL DATE: _____



Montana C-PACE Program Plan

REPORT REQUIRED BY MONTANA CODE ANNOTATED TITLE 90, CHAPTER 4 PART 13 ON THE CREATION OF A MONTANA COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENT PROGRAM

This Report is adopted by the Montana Facility Finance Authority (“Authority”) for the Montana Commercial Property Assessed Capital Enhancement (“MTPACE”) Program (the “Program”) in accordance with the requirements of the Commercial Property-Assessed Capital Enhancements Act of Montana (the “PACE Act”) as set forth in Montana Code Annotated Title 90, Chapter 4, Part 13.

Montana communities benefit when older existing buildings are modified or new buildings are constructed with technology and equipment that increases energy efficiency and reduces water consumption. As described in this Program Plan, The State of Montana via the Montana Facility Finance Authority acting as Program Administrator is establishing the MTPACE Program to encourage private sector investment in energy efficiency and water conservation. The MTPACE program will be offered to Record Owners on a strictly voluntary basis and loans will be privately financed.

Authorized under the PACE Act enacted in 2021, the MTPACE program is an innovative financing program that enables private sector owners of privately-owned commercial, nonprofit, industrial, and multi-family residential properties with four or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits. PACE loans provide up to 100% financing of all eligible project costs, with little or no up-front out-of-pocket cost to the owner.

Loans made under the MTPACE Program will be secured by property tax assessments on the property that are voluntarily imposed by the owner. Assessments may be amortized over the projected life of the improvements. The expected cost savings derived from improvements financed with PACE loans are expected to match or exceed the total cost of project over the term of the financing.

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

Administration of the PACE Program

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

Eligible Properties

All private sector owners of Eligible Properties located within a C-PACE District may participate in PACE

financing. “Eligible Properties” include commercial, industrial, non-profit, and multi-family residential properties with four or more dwelling units. Government and residential property are not Eligible Properties.

Qualified Improvements

PACE financing may be used to pay for Qualified Improvements to Eligible Properties. “Qualified Improvements” are permanent improvements intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature. Under the PACE Act, products or devices that are not permanently fixed to real property are not considered to be Qualified Improvements.

The following items may constitute Qualified Improvements:

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

Eligible Lenders

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

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

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a small business

- Small business investment company;
- Any publicly traded entity; or
- Any private entity that:
 - Has a minimum net worth of \$5 million; and
 - Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending; and
 - Can provide independent certification as to availability of funds;
- All Lenders must have the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

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

Contractor Standards

MTPACE seeks to facilitate good, locally based jobs for contractors and their employees. MTPACE recommends that projects financed through MTPACE must 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 this Program Plan. Installation contractors must register with MTPACE and certify that they hold all licenses required to install the applicable ECM(s). Upon acceptance of the MTPACE terms and conditions and approval by the Program Administrator, the installation contractor will become a Registered Contractor in the MTPACE program.

Qualified Contractor

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

MTPACE Contractor application process

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

Criteria to be accepted as MTPACE commercial Contractor:

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

Required certifications

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

HVAC

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

Solar Photovoltaic/Solar Thermal

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

Geothermal

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

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

Marketing and Education Plan

Program Information

The Authority has acquired the website www.LastBestPACE.com and www.MTPACE.com (and related addresses) to serve as point of information and training for C-PACE including resources for Record Owners, Lenders, contractors and engineers. The website will also host training resources as well as case studies and program updates.

Print media will also be a part of outreach including program brochures as well as one-page briefs on specific questions and topics as they arise or appropriate for audience. CPACE will also be featured in the Authority's quarterly e-newsletters and printed annual review. These will be used to highlight program opportunities as well as successful projects

Outreach & Training

A key component to C-PACE success is training for engineers, contractors, and lenders on how to use C-PACE and comply with program policies. The Authority is working with the Montana Department of Environmental Quality to develop in-person and online contractor and engineer training. The training will be encouraged for contractors.

The Authority plans on using attendance and presentation opportunities at several statewide conferences for local governments, lenders, economic developers and contractors. Conferences will provide the Authority the ability to provide education and marketing to wider audiences as well as a chance to reach individuals interested in C-PACE

Quality Assurance and Antifraud Measures

The Authority has placed the following quality assurance and anti-fraud measures.

Application

As Administrator, the Authority will review the CPACE application for accuracy and completeness and verify the application's documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the Record Owners, the property itself, and the proposed project all satisfy program underwriting and technical standards requirements. The Contractor will be required to provide copies of permits, release of lien, and a statement the project was constructed in accordance with the PACE program guidelines and has complied with all applicable local, state, and federal laws.

Independent Reviewer

The reviewer is a critical antifraud measure and requires an independent review of the energy/water savings baselines and approval from a licensed or certified professional approved by the Authority before the project can proceed. This review will include site visit and a letter from the engineer certifying that they are qualified, have no financial interest in the project and is an independent reviewer.

The reviewer will attest that they believe the project is cost effective and in compliance with the MTPACE program guidelines and standard engineering practices. After the construction of the project is complete, the contractor will certify that the project is complete, compliant with applicable state codes and functioning as designed. In addition, as part of its underwriting process, the typical Lender will, at its discretion, require an independent inspection and verification of qualifications, separate from the MTPACE program requirements.

Documentation & Protection

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

In addition, a contract between the Local Government and the Record Owner is invalid and unenforceable unless the holder of a mortgage, trust indenture beneficiary, or loan servicer provides the governing body with each of the following:

- An executed consent agreement, properly notarized and executed within 3 months prior to the 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 on behalf of the mortgage holder, trust indenture beneficiary, or loan servicer; and

Prior to closing the financing, the Record Owner will certify to the Authority that the Record Owner understands and accepts the terms of the contract and financing (See Appendix B). Also, upon completion of the project the Contractor who completed the project shall submit written verification to the Authority that the energy conservation project was properly installed and is operating as intended.

Record Owner Protections

Prior to a Local Government and a Record Owner entering a contract, the Authority shall obtain independent verification from the Record Owner that the Record Owner understands and accepts the

terms of the contract and shall make the verification available to the Local Government. The contract must allow the Record Owner to cancel the contract within three business days of signing the contract. The contract must include full disclosure that by entering the contract, the Record Owner may incur a property tax lien on the real property included under the contract.

As per statute, the Authority keeps a database of participating contractors to manage, track and resolve consumer complaints. The database will provide Record Owners with the information they need to make an informed choice for their Contractor.

MTPACE Financing Process

Prior to Application

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

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

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

Application

Once the Energy Assessment is complete, the Authority will accept applications (see Appendix A) from Record Owners seeking to finance Qualified Improvements under the program. Each application must be accompanied by the required application fee and must include:

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

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

Engage with Contractor and Receive Independent Review

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

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

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

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

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

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

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

Secure Financing

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

The Record Owner is expected to produce the following documentation prior to closing on the C-PACE loan:

- The reviewer's report conducted by a qualified, independent third party, showing water

or energy baseline conditions and the projected water or energy savings, or the amount of renewable energy generated attributable to the project.

- Documentation that there are no delinquent taxes, special assessments, or water or sewer charges are not due on the real property. And that delinquent assessments on the real property under a commercial property-assessed capital enhancements program are not due.
- If there is a senior lender or mortgage holder in addition to the C-PACE Lender, the Record Owner needs to provide:
 - An executed consent agreement, properly notarized and executed within 3 months prior to the 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

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

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

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

Close Loan and File Assessment

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

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

Complete Project

With funds from the Lender, the Record Owner can purchase directly the equipment and materials for the Qualified Improvement and contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of the Qualified Improvements.

Alternatively, the Lender may make progress payments to the Record Owner as the Qualified Improvement is installed.

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

Verification Review

After a Qualified Improvement is completed, the Authority requires the Contractor who completed the project to submit written verification to the Authority that the energy conservation project was properly installed and is operating as intended. The verification report conclusively establishes that the improvement is a Qualified Improvement, and the project is qualified under the PACE program.

Loan Repayment

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

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

Program Fee Schedule

There is a non-refundable Initial Application Fee of \$250 due upon completion of the application.

If the application is approved and the financing is successful, there is a fee of 1% of the par amount of the loan with a minimum fee of \$1,000 and a maximum fee of \$75,000 due at closing. The final fee will be reduced by the amount of the initial application fee.

There are no annual fees charged by the Authority.

Local governments and Lenders may opt to charge fees on a one-time or ongoing basis at their discretion.

Appendix A: Application

MTPACE PROJECT APPLICATION

SECTION 1. APPLICANT INFORMATION		
Applicant Primary Contact - Person to whom all communication will be directed		
Name:	Title:	
Email:	Phone:	
Organization:		
Mailing Street Address:		
City	State:	Zip Code:
Relationship of Primary Contact to Property:		

Property Legal Owner Name(s) - As they appear on property title	
Owner 1 Name:	Organization/Title:
Owner 2 Name:	Organization/Title:
Owner 3 Name:	Organization/Title:

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

SECTION 2. PROPERTY INFORMATION		
Property Physical Address		
Street Address:		County:
City	State:	Zip Code:
Property Tax Assessor-Collector ID or Reference Number:		

Property Type - Check one		
<input type="checkbox"/> Commercial	<input type="checkbox"/> Multifamily (>4 units)	<input type="checkbox"/> Industrial
<input type="checkbox"/> Other		
Legal Description:		

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

SECTION 3. OWNER INFORMATION	
Please Confirm the Following:	
Owner is not subject to any outstanding, unsatisfied judgment:	
Owner is current with all taxes and assessments on property:	
Owner is current on all debts secured by the property:	

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

Owner is able and willing to provide:

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

SECTION 4. PROPOSED PROJECT DETAILS

Project Development Status:

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

Property Utility Information	
What is the name of property's electric provider?	
What is the name of property's water provider?	
What is the name of property's natural gas provider?	
Most recent year's total utility cost?	

SECTION 5. PROJECT FINANCIAL SUMMARY	
Total Project Cost	
Total Estimate Project Costs	\$
Less: Preliminary Estimate of Rebates/Incentives:	\$
Less: Record Owner Contribution:	\$
Total Estimated PACE Financing Amount:	\$

Appendix B: Model Documents

Form Contract between Local Government and Record Owner

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

RECITALS

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

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

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

AGREEMENT

The parties agree as follows:

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

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

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

Contract will cease and terminate upon notice from Lender to the Authorized Representative that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Owner Contract and deliver the release to the Authorized Representative. Thereafter, the Authorized Representative will record the release.

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

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

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

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

The Assessment, together with any penalties and interest thereon, is a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the Office of the Clerk and Recorder of _____ until the Assessment and any penalties and interest are paid; and such lien has the same priority and status as other property tax and assessment liens, pursuant to Section 90-4-1307(3)(a) of the PACE Act. The lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become

due is not eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for any past due portion of the Assessment. *Id.*

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

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

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

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

Form Contract between Local Government and Lender.

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

RECITALS

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

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

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

D. Property Owner and Local Government have entered into a written contract as required by Section 90-4-1304 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the "Owner Contract"), in which Property Owner has requested that Local Government impose an assessment (the "Assessment") on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Commercial Property Assessed Capital Enhancement Act of Montana to be filed in the in the Office of the Clerk and Recorder of

_____, Montana (the "Notice of Contractual Assessment Lien"), a copy of which is attached to the Owner Contract as Exhibit A, to repay the financing of such Qualified Improvements. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

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

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

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

In a suit to collect a delinquent installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees, penalties, and interest due, in the

same manner according to Section 15-16-506, MCA, as in a suit to collect a delinquent property tax. In the event such a suit includes collection of other delinquent assessments and property taxes, Lender shall be entitled to receive its pro rata share of any settlement or judgment entered in such suit to pay delinquent installments of the Assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 18. Construction Terms. If this Lender Contract includes requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit C attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

EXECUTED effective as of _____, 20_____.

LENDER:

By:

Name:

Title:

Address:

MONTANA FACILITY FINANCE AUTHORITY AS AUTHORIZED
REPRESENTATIVE FOR LOCAL GOVERNMENT:

By:

Name:

Title:

Address:

EXHIBIT A

OWNER CONTRACT

EXHIBIT B

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Schedule:

Project Completion Date:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Exhibit C

Construction Terms

[if applicable]

Date	Draw down Amount	Purpose

Model PACE Assessment Lien

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

RECITALS

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

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

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

NOW, THEREFORE:

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

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

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

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

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

EXECUTED on _____, _____.

LOCAL GOVERNMENT:

By:

Name:

Title:

STATE OF MONTANA)

) ss.

County of _____)

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

Signature of Notary

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

(SEAL)

(Print Name of Notary)

Notary Public for the State of Montana

Residing at _____, Montana

My commission expires: _____

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT B
QUALIFIED IMPROVEMENTS

EXHIBIT C

Assessment Payment Schedule

Assessment Total:

Payment Schedule:

Project Completion Date:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

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:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

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].

Model Local Government Resolution of Intent

Resolution No. ____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adopted this _____ day of _____, 20__.

Model Local Government Resolution establishing a PACE District

Resolution No. ____

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the MFFA 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 MFFA 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__.

**BORROWER ACKNOWLEDGEMENT OF RISK AND CERTIFICATION AS TO
MONTANA CPACE PROGRAMATIC REQUIREMENTS**

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

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

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

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

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

4) I understand that my only opportunity to cancel the Owner Contract was within three business days of signing the Owner Contract and do hereby represent that no such 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 CPACE Program Plan and Guidelines. I understand how these documents effect my legal rights and interests and have no further questions regarding them.

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

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

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

DATED this ____ day of ____, 20__, in ____, Montana.

[Property Owner]

MONTANA FACILITY FINANCE AUTHORITY

MONTANA COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENTS PROGRAM POLICY

December 8, 2021

POLICY FOR THE MONTANA COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENTS PROGRAM (“CPACE”) dated as of December 8, 2021 and effective as of January 1, 2022 (the “Policy”), relating to the administration of CPACE by the MONTANA FACILITY FINANCE AUTHORITY (as hereinafter defined, the “Authority”) pursuant to Section 90-7-202(20), MCA.

POLICY: CPACE Program

PURPOSE: To enable Montana property owners to finance energy conservation measures and renewable energy systems on existing or new buildings through third-party financings (a “CPACE Loan”) with repayment of such CPACE Loan occurring via special assessments levied against the improved property and collected with property taxes.

PARAMETERS: The Authority adopted the CPACE Program Plan and Program Guidelines on December 8, 2021 to comply with its statutory duty to administer commercial property-assessed capital enhancement programs in accordance with Title 90, chapter 4, part 13, Montana Code Annotated (the “CPACE Program Guidelines”).

1. Eligible borrowers and projects include those borrowers and projects which satisfy the requirements detailed in the CPACE Program Plan and Guidelines.
2. CPACE Loan Approval: CPACE Loans may be approved if Authority staff determines that the requirements of the CPACE Program Plan and Guidelines have been satisfied.
3. Program Fees and Expenses: Program Fees and Expenses shall be charged as detailed in the CPACE Program Plan and Guidelines.
4. Authority Responsibilities:
 - a. The Authority may retain legal professionals to draft the necessary documents and provide all legal services necessary to complete CPACE Loan transactions.
 - b. The Authority staff shall perform all functions reasonably necessary to satisfy the Authority’s responsibilities as described in the CPACE Program Plan and Guidelines, as may be amended from time to time.
6. Authorized Personnel:

Staff listed below are authorized to approve CPACE Loans under this program:

Executive Director—Adam Gill and any successor.

IN WITNESS WHEREOF, the parties have caused this policy to be revised and reviewed as of the 8th day of December, 2021.

MONTANA FACILITY FINANCE AUTHORITY

By: _____
Vu Pham, Chairman

By: _____
Adam Gill, Executive Director

RESOLUTION NO. 21-14

RESOLUTION APPROVING THE MONTANA COMMERCIAL PROPERTY ASSESSED CAPITAL ENHANCEMENTS PROGRAM PLAN, GUIDELINES, AND POLICY

BE IT RESOLVED by the Montana Facility Finance Authority (the “Authority”), as follows:

Section 1. Recitals.

1.01 The Authority is required by Montana Code Annotated, Title 90, Chapter 7, Part 2, to administer commercial property-assessed capital enhancements programs in accordance with Title 90, Chapter 4, Part 13, MCA (the “CPACE Act”).

1.02 The CPACE Act provides that the Authority shall provide administrative support to local governments for the administration of the commercial property-assessed capital enhancements program and establish a plan in accordance with § 90-4-1305, MCA.

1.03 Authority staff have consulted with local and county governments and the commercial lending industry, including bank and credit union representatives, on the content of the CPACE Program Plan and the CPACE Program Guidelines, as required by the CPACE Act.

1.04 Section 90-4-1303(3), MCA, requires that the Authority shall report to the legislature regarding the details of the CPACE Program Plan.

Section 2. Findings.

2.01 The CPACE Program Plan and CPACE Program Guidelines, as well as the programmatic documents referenced therein and created by Authority staff and legal counsel, satisfy the program administration requirements of the Authority under the CPACE Act.

2.02 The CPACE Program Policy will enable Authority staff to administer the CPACE Program Plan and CPACE Guidelines under the Authority’s powers enumerated in Section 90-7-202(20), MCA.

2.03 The CPACE Program Plan satisfies the reporting obligations to the legislature detailed in § 90-4-1303(3), MCA.

Section 3. Approval and Authorizations.

3.01 The Authority does hereby approve the CPACE Program Policy and authorizes Chairman Vu Pham and Executive Director Adam Gill to execute the same.

3.02 The Authority does hereby approve the CPACE Program Plan and CPACE Program Guidelines, to be implemented and amended as necessary by Authority staff pursuant to the CPACE Program Policy.

PASSED AND APPROVED BY THE MONTANA FACILITY FINANCE AUTHORITY
this 8th day of December, 2021.

Vu Pham, Chair

ATTEST:

Adam Gill, Executive Director

Montana Facility Finance Authority
Budget v. Actual Expenses
11/30/21
42% Expended

Legislative Budget		Year to Date			
	Category	Budget	Actual	\$ Variance	% Variance
\$805,824	A) INCOME	\$215,950	566,710	350,760	162%
135,000	Application Fees	56,250	416,300	360,050	640%
545,824	Annual Fees	107,617	117,397	9,780	9%
125,000	Investment Income	52,083	33,014	(19,070)	-37%
\$311,772	B) PERSONAL SERVICES EXPENSE	\$129,905	136,051	6,146	5%
304,772	Salaries & benefits	126,988	134,751	7,763	
7,000	Board Per Diem	2,917	1,300	(1,617)	
\$313,777	C) OPERATING EXPENSES**	\$101,574	118,192	16,618	16%
58,184	Contracted & Other Services	24,243	47,967	23,723	98%
	Misc. Other Services		30,478		
	Legal Services		17,073		
	Legislative Audit		0		
	ITSD		416		
14,633	Supplies/Materials/Equipment	6,097	8,641	2,544	42%
7,587	Communications	3,161	1,144	(2,018)	-64%
24,324	Travel	10,135	14,388	4,253	42%
33,283	Rent	13,868	14,156	289	2%
	Building Rent		13,961		
	Other Rent		195		
156	Repairs & Maintenance	65	297	232	357%
70,054	Miscellaneous	29,189	31,367	2,178	7%
	Commerce Department Services		18,064		
	Administration (statewide) Indirect Costs		1,706		
	Education		2,647		
	Other Miscellaneous		8,950		
0	Capital Leases	232	232		
35,000	BOI Administrative Support**	14,583	0	(14,583)	-100%
\$180,275	REVENUES IN EXCESS OF EXPENSES (A-B-C)	-15,529	312,467	327,996	-2112%
150,000	Grants-Obligated/Paid	43,000	25,000		
\$30,275	Current Year Increase in Net Assets		287,467		
	INCREASE (DECREASE) IN NET ASSETS		287,467		

* Income presented on CASH basis. GAAP accrual accounting would reflect approximately \$10,831 less income annually, or < 2.12%

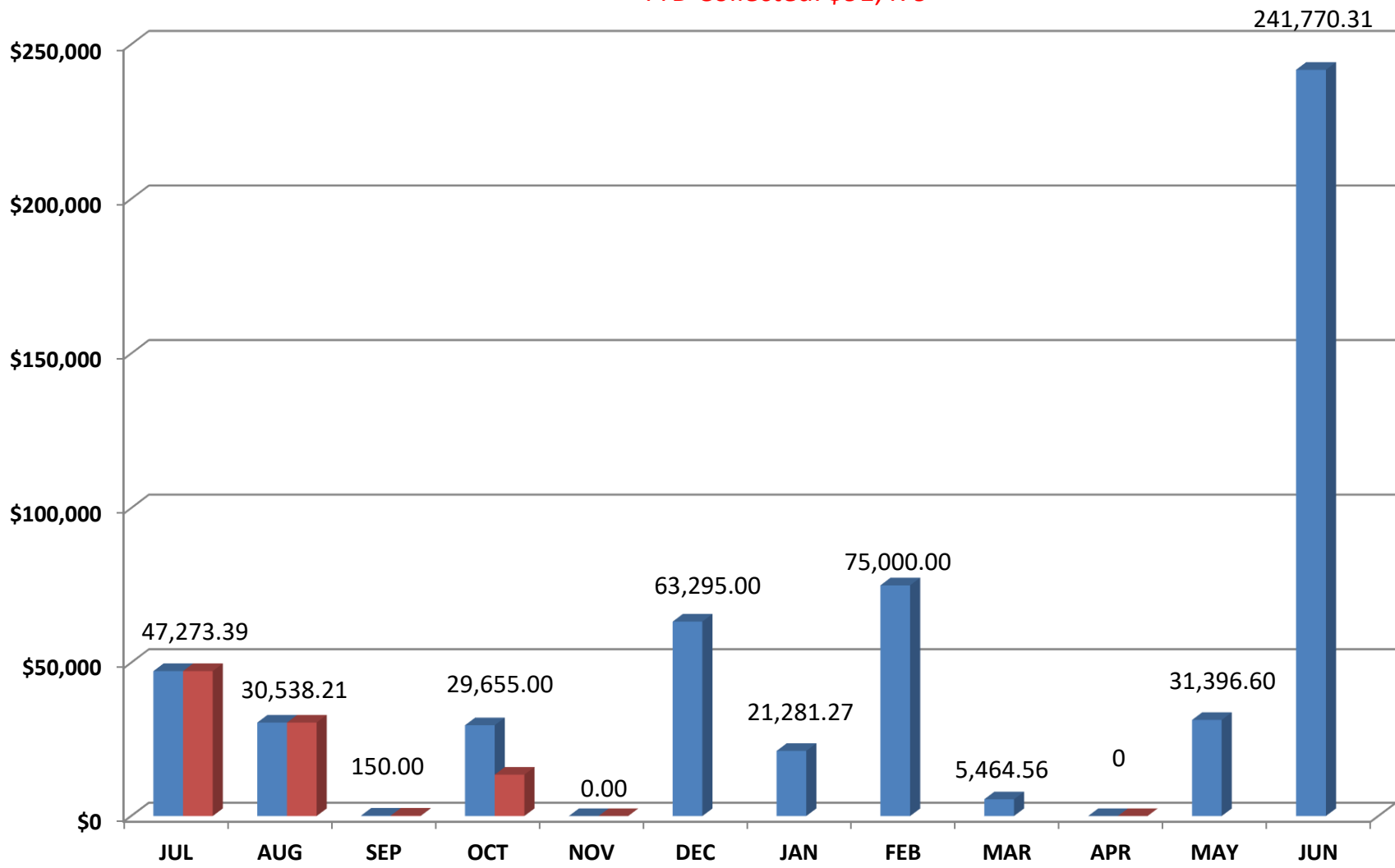
FY 2022 Annual Service Fees

As of November 30, 2021

Annual Projected: \$545,824

YTD Projected: \$107,617

YTD Collected: \$91,479



RESERVE BALANCES AS OF 12-01-2021

A/E 06015	Operating Account Summary	Current Balance	Policy Guideline
	Total Fund Balance Available Net Capital Reserve "B" Balance	3,713,532	
	Less: Working Capital Reserve Requirement	1,613,786	1,613,786
	Available for Restricted Capital Reserve "A"	2,099,746	9,194,051
	Fund Balance: Sub-Total	3,713,532	10,807,837
A/E 06015	Trust Fund Loan Pool		
	RC 710300, Accounts 521190	25,646	
	Plus: Prior Year End Capital Reserve "B" Fund Balance Sub Total	368,549	
	Capital Reserve "B" Fund Balance	394,195	534,666
A/E 06012	Direct Loan Program		
	Current Program Fund Balance	4,858,532	
	Less: Outstanding Loan Balance	3,601,303	
	Funds Available to Loan from Direct Loan Program	1,257,230	
	Fund Balance: Sub-Total	4,858,532	4,542,709
	Total Projected Fund Balance	8,966,260	15,885,212

Notes:

Policy Guidelines - Minimum Funding Requirements

(a) Twice the current Fiscal Year annual budget.	806,893
(b) 10% of the outstanding BOI enhanced bond balance as of 7/1/19	91,940,507
(c) \$3,542,709 as of 7/1/19 plus YTD loan payments, account investment earnings.	4,542,709
(d) 10% of the Trust Fund Loan Pool Balance as of 7/1/19	5,346,663

MONTANA FACILITY FINANCE AUTHORITY

Staff Approved Loans

10/01/21 - 11/30/21

Submitted Applications

<u>Borrower</u>	<u>Location</u>	<u>Date Submitted</u>	<u>Term</u>	<u>Interest</u>	<u>Amount</u>	<u>Project</u>
Total Pending Direct Loans:					\$ -	

Approved Applications

<u>Borrower</u>	<u>Location</u>	<u>Date Approved</u>	<u>Term</u>	<u>Interest</u>	<u>Amount</u>	<u>Project</u>
Total Approved Direct Loans:					\$ -	

Funds Available Under

Direct Loan Program:

Loan Fund: (11/30/2021)

Total Outstanding Loans: (11/30/2021)

Approved Applications from above:

Total Available to Loan at 11/30/2021

4,858,532
(3,601,303)
-
\$ 1,257,229

Funded Applications from 7/1/21:

<u>Borrower</u>	<u>Location</u>	<u>Date Funded</u>	<u>Term</u>	<u>Interest</u>	<u>Amount</u>	<u>Project</u>
Rimrock Foundation	Billings	09/01/21	3	2.00%	\$ 500,000	Building Purchase
Fallon Medical Complex	Baker	09/16/21	5	2.00%	\$ 238,938	TFL Refinance
Total Loans Funded since 7/1/21					\$ 738,938	

MONTANA FACILITY FINANCE AUTHORITY

Staff Approved Grants

10/1/21 - 11/30/21

Commitments Pending

<u>Facility</u>	<u>Location</u>	<u>Date Submitted</u>	<u>Date Approved</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Project</u>	<u>Program</u>
Total Pending Grants:					\$ -		

Grants Paid since 7/1/2021

<u>Grantee</u>	<u>Location</u>	<u>Date</u>	<u>Approved</u>	<u>Paid</u>	<u>Amount</u>	<u>Project</u>	<u>Program</u>
Butte Spirit Center	Butte, MT	06/24/21	7/6/2021	9/2/2021	\$ 3,000	Energy Efficiency Grant	EEP
Wheatland Memorial Healthcare	Harlowtown, MT	2/26/2021	2/26/2021	10/4/2021	\$ 25,000	Capital Improvement Plan	MCAP
Liberty Medical Center	Chester, MT	2/6/2020	2/6/2020	11/15/2021	\$ 14,982	Capital Improvement Plan	MCAP
Total Grants:					\$ 28,000		

2022

JANUARY

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23/30	24/31	25	26	27	28	29

FEBRUARY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

MARCH

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

APRIL

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

MAY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

JUNE

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

JULY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24/31	25	26	27	28	29	30

AUGUST

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

SEPTEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

OCTOBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23/30	24/31	25	26	27	28	29

NOVEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

HOLIDAYS AND OBSERVANCES

1-Jan **New Year's Day**
17-Jan **MLK Day**
21-Feb **Presidents' Day**
30-May **Memorial Day**

4-Jul **Independence Day**
5-Sep **Labor Day**
11-Oct **Columbus Day**
11-Nov **Veterans Day Ob.**

24-Nov **Thanksgiving Day**
26-Dec **Christmas Day Ob.**

CONFERENCES

Apr 24-26, 2022 NAHEFFA, SC