

# PACE Program Manual

## Lean & Green Michigan

Version 1.0

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## 1.0 INTRODUCTION

The Michigan PACE Statute ([see Appendix A: Michigan PACE Statute](#)) authorizes local units of government to adopt property assessed clean energy programs and create districts that enable commercial property owners to finance renewable energy systems and energy efficiency improvements. The statute encourages private sector lenders to provide financing for these projects, and allows local jurisdictions to incentivize that investment by creating a voluntary special assessment on a commercial property to secure the loan. Local units of government may find this a daunting new program to launch, but the Act sets out clear guidelines for how to establish a program, and specifically allows municipalities to join with any other local unit of government or a third party to implement PACE.

PACE is an innovative financing mechanism that enables commercial and industrial property owners (including nonprofit, multifamily, and agricultural properties) to take advantage of long-term, property secured, non-recourse loans for energy-efficiency, renewable energy, and water conservation improvements. PACE financing helps property owners overcome financial barriers that can discourage investment. Property owners can typically finance these improvements with no up-front cost to property owners and can generate positive cash flow upon completion. The term of a PACE financing may extend for as long as the useful life of the improvement, which may be as long as 30 years and results in cost savings that exceed the investment in the energy project. This results in improved business profitability, increased property value, and improved sustainability of the real estate asset.

Lean & Green Michigan (LAGM) is proud to partner with local units of government across Michigan, creating a model PACE program that is easy to implement and connects them to the growing open market LAGM has developed for private lenders and local contractors. LAGM is excited to work with new local government partners to quickly and efficiently bring the economic development, financial, and environmental benefits of PACE to their commercial property owners. Any Michigan local unit of government may opt into the Lean & Green Michigan PACE program. Contact LAGM at [info@leanandgreenmi.com](mailto:info@leanandgreenmi.com).

## 2.0 DEFINITIONS

Certain terms used in this Program Manual have meanings defined in the Michigan PACE Statute:

**Applicant** means any property owner that submits an application to the Program Administrator with the intent to utilize PACE Financing to fund a PACE project.

**Application** – LAGM application form attached hereto as Appendix B ([See Appendix B: LAGM Application Form](#)) or LAGM PACE Express application form attached as Appendix C ([See Appendix C: LAGM PACE Express Application Form](#)).

**Commissioning** means a process completed during the final stages of construction of a PACE project (but before final completion) to test and verify that the Energy Project has been designed and installed as set forth in the Energy Savings Guarantee.

**Eligible Property** means any privately owned property located in a member jurisdiction that is utilized for commercial purposes such as retail, industrial, office, agricultural, non-profit, and hospitality uses, as well as multifamily properties with four or more units. For the avoidance of doubt, nonprofits and houses of worship also qualify as Eligible Property.

**Energy Audit** means a baseline Energy Audit and assessment of the proposed Energy Efficiency Improvements and Renewable Energy Systems, establishing the future savings of the Energy Project. This shall be completed by a qualified contractor or engineer, as detailed below in [Section 5.1 Energy Audit Requirements](#).

**Energy Conservation Measure (ECM)** means any measure implemented to reduce the consumption of energy and water in a building or produce renewable energy. The measures implemented vary, but generally are designed to reduce water, electricity, and gas utility costs. The aim of an ECM should be to achieve a savings, reducing the amount of energy or water used by a particular process, technology or facility.

**Energy Efficiency Improvement** shall have the meaning in the PACE Statute, currently shown as: means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following:

- Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.
- Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.

- Automated energy control systems.
- Heating, ventilating, or air-conditioning and distribution system modifications or replacements.
- Caulking, weather-stripping, and air sealing.
- Replacement or modification of lighting fixtures to reduce the energy use of the lighting system.
- Energy recovery systems.
- Day lighting systems.
- Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.
- Measures to reduce the usage of water or increase the efficiency of water usage.
- Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

**Energy Project** shall have the meaning in the PACE Statute, currently shown as: means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system or anaerobic digester energy system.

**LAGM** – Lean & Green Michigan, LLC, a Michigan limited liability company, which serves as a Program Administrator managing property assessed clean energy districts established by participating local units of government.

**Member Jurisdiction** – A participating Michigan county, city, village, or township that has adopted PACE and opted into the Lean & Green Michigan PACE program.

**Mortgage Lender Consent** – Written consent of the existing holder(s) of a mortgage or other real property lien on the Eligible Property of an Applicant, which must be obtained by an Applicant prior to closing on a PACE Financing. (See [Section 8.0 Mortgage Lender Consent](#) for further details).

**PACE** – Property Assessed Clean Energy.

**PACE Express** – LAGM program for Energy Projects which fall below the statutory threshold requiring an SIR greater than 1, and a savings guarantee. The program features a streamlined process and reduced fees. ([See Appendix J for further details](#)).

**PACE Lender** – A commercial lender approved by the Program Administrator to provide PACE Financing.

**PACE project** – shall have the same meaning as the term Energy Project, as defined in the Michigan PACE Statute, and may be used interchangeably with Energy Project.

**PACE Special Assessment** means a special assessment requested by the Property Owner, and created by the PACE Special Assessment Agreement, which creates a lien against the property pursuant to MCL §460.943.

**PACE Special Assessment Agreement** – Written contract entered into by the Property Owner, PACE Lender, and member jurisdiction, that imposes assessment in support of the financing, and is recorded in the applicable member jurisdiction’s property records The LAGM model PACE Special Assessment Agreement is attached hereto as [Appendix D](#).

**PACE Statute** – Michigan Public [Act 270 of 2010](#) §460.931-460.949.

**Program Administrator** – LAGM, which pursuant to MCL §460.949 partners with local units of government for the joint implementation of the Lean & Green Michigan property assessed clean energy program across their jurisdictions.

**Program Report** means a report adopted by the local unit of government while adopting the resolution to establish a PACE district, and consisting of those elements as required by §460.939.

**Property Owner** means a property owner (including a person who will be a property owner immediately following the closing of a PACE Financing, subject to documentation reasonably satisfactory to the Program Administrator) located in a member jurisdiction that meets the eligibility requirements set forth in this Program Manual.

**Renewable Energy Resource** shall have the meaning in the PACE Statute, currently shown as: means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable Energy Resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

- Biomass.
- Solar and solar thermal energy.
- Wind energy.
- Geothermal energy.
- Methane gas captured from a landfill.

**Renewable Energy System** shall have the meaning in the PACE Statute, currently shown as: means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that use 1 or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator or digester.

**Savings Guarantee** means a written guarantee provided by the contractor to the Property Owner that the Energy Project energy and water conservation utility bill savings and other operational savings achieve a Savings-To-Investment Ratio greater than 1.0. The contractor will guarantee to pay annually the owner any shortfall in savings below this 1.0 level. A sample Savings Guarantee can be found in [Appendix E](#).

**Savings-To-Investment Ratio (SIR)** means required savings-to-investment ratio found in MCL §460.939(p), which states that for Energy Projects financed with more than \$250,000 in assessments, that the project will achieve a savings-to-investment ratio greater than 1. ([See Section 6.0 for more details on the calculation of SIR](#)).



## 3.0 PROGRAM INFORMATION

### 3.1 Program Administrator: Lean & Green Michigan, LLC

Lean & Green Michigan (LAGM) is a public-private partnership that establishes a marketplace for clean energy project financing. The program is designed to support eligible property owners to complete comprehensive energy and water resource projects, eliminate waste, and save money. PACE is an innovative financing solution that makes projects economical for all parties – property owners, contractors, financial institutions, and participating governments. LAGM helps administer PACE uniformly and efficiently, which encourages contractors and lenders to participate in the program.

Rather than relying on public funding through bonds or notes, LAGM attracts private capital to lower companies' energy costs and help them operate more efficiently, which in turn creates work for contractors, and their employees.

LAGM coalesces the market, administering the program on behalf of local governments and ensuring that projects comply with local program requirements and the Michigan statute laid out in PA 270 of 2010. Lean & Green Michigan is committed to assisting parties in all aspects of Lean & Green Michigan PACE financing, from initial marketing and outreach to deal closure.

### 3.2 Contact Information

Lean & Green Michigan, LLC

Website: [www.leanandgreenmi.com](http://www.leanandgreenmi.com)

Email: [info@leanandgreenmi.com](mailto:info@leanandgreenmi.com)

Phone: (313) 444-1474

Address: 500 Temple Street, Suite 6270, Detroit, MI 48201

## 4.0 ELIGIBILITY REQUIREMENTS

Member jurisdictions, be they cities, counties, or townships who have chosen to participate in the PACE market, will evaluate special assessments on a project-by-project basis. LAGM will assist by conducting an initial review, but the final decision remains with the local government. LAGM works with property owners, contractors, and PACE lenders to ensure that potential projects comply with the statutory requirements and will make a positive recommendation to the Authorized Official only upon the review of the details of both the property and project. It is important to note that LAGM may review the eligibility of property and property owner, as well as the technical details of the potential project.

### 4.1 Eligible Properties

Eligible properties include privately owned commercial or industrial properties located in a participating member jurisdiction. Commercial property may include any property used for commercial purposes such as retail, industrial, office, agricultural, houses of worship, non-profit organizations, hospitality, and multifamily properties with four or more units.

In addition to being a qualifying property type, LAGM will review additional details about the property including, but not limited to, ensuring:

- There are no delinquent taxes, special assessments, or water or sewer charges on the property. Properties that are currently appealing a property tax assessment will be reviewed, and LAGM will determine eligibility on a case-by-case basis.
- There are no delinquent assessments on the property under a PACE program.
- There are no involuntary liens, defaults or judgments applicable to the subject property. A property owner with one or more involuntary liens, defaults, or judgments may be allowed to participate if they can demonstrate an acceptable reason for the lien, default, or judgment and present a documented path for resolution.
- That the correct parcel identification number and legal property description are identified and incorporated into the documents. PACE is secured by the value of the property, and it is important to determine the correct property description and parcel identification numbers, also known as the Parcel ID. An energy project may extend over more than one parcel.

LAGM will review public records, including the real property records, to verify compliance with these requirements, and, in consultation with the member jurisdiction, reserves the right to make allowances for certain issues identified above that do not reflect financial distress.

## 4.2 Eligible Property Owners

The Eligibility of the property owner is strictly defined within the PACE Statute, and will be confirmed by LAGM by review of the applicable county land records. Additionally, LAGM requires at least an Owners & Encumbrances Report to be issued by a Title Company showing the appropriate parcel information as well as the record owners, and identifying any issues with the chain of title.

To be eligible to participate in the program, property owners must, at a minimum:

- Be the person or persons possessed of the most recent fee title or land contract vendee's interest in property, as shown by the records of the county register of deeds.
- Alternatively, if the property owner will become the owner of the property concurrently upon closing of the PACE financing, LAGM requires documentary evidence showing such anticipated transfer reasonably satisfactory.
- All record owners to the subject property, or their legally authorized representatives, must sign the PACE special assessment agreement, or appoint one representative to execute all documents. This appointment may be made by corporate resolution or equivalent document.
- Certify that they (and their corporate parent, if the property owner is a single-purpose entity) are solvent and that no proceedings are pending or threatened in which the property owner (or the corporate parent, as applicable) may be adjudicated as bankrupt, become the debtor in a bankruptcy proceeding, be discharged from all of the property owner's (or corporate parent's, as applicable) debts or obligations, be granted an extension of time to pay the property owner's (and the corporate parent's, as applicable) debts or be subjected to a reorganization or readjustment of the property owner's (and the corporate parent's, as applicable) debts. The property owner must also certify that the property owner (or any corporate parent if the property owner is a single-purpose entity) has not filed for or been subject to bankruptcy protection in the past three years.
- Certify that they are not a party to any litigation or administrative proceeding of any nature in which the property owner has been served with notice of pending litigation, and that no such litigation or administrative proceeding is pending or threatened that, if successful, would materially adversely affect the property owner's ability to operate its business or pay the contractual assessment when due, or which challenges or questions the validity or enforceability of the PACE special assessment agreement or any other documents executed by the property owner in connection with the property owner's participation in LAGM.

### 4.3 Eligible Energy Projects

The Michigan PACE Statute broadly defines what may qualify as an eligible energy project. A simple retrofit of existing technology; a complete gut-rehab and repurposing of a property; and brand-new construction can all be eligible. PACE has broad applicability, and LAGM is available to assist property owners and contractors in the initial design of projects to ensure that they qualify.

**Eligible PACE projects must meet the following criteria:**

- Energy Efficiency Improvement(s) must decrease energy consumption, including consumption from electricity, propane, natural gas, or water usage.
- Renewable Energy System(s) must generate electricity from a qualifying renewable energy resource.
- Energy Efficiency Improvement(s) and Renewable Energy System(s) must be permanently affixed to the real property, and the property owner must leave the improvements affixed or attached to the property upon sale or transfer of title.

**Examples of eligible Energy Efficiency Improvement(s) include, but are not limited to:**

- High efficiency lighting
- Heating ventilation air conditioning (HVAC) upgrades
- New automated building and HVAC controls
- Variable speed drives (VSDs) on motors, fans and pumps
- High efficiency chillers, boilers and furnaces
- High efficiency hot water heating systems
- Combustion and burner upgrades
- Water conservation measures
- Heat recovery and steam traps
- Building enclosure/envelope improvements
- Building automation (energy management) systems
- Engineering and project development costs associated with the above improvements
- EV Charging stations
- Replacement or modification of lighting fixtures to reduce the energy use of the lighting system.
- Energy recovery systems.
- Day lighting systems.

**Examples of eligible Renewable Energy System(s) include but are not limited to:**

- Biomass
- Solar and solar thermal energy
- Wind energy
- Geothermal energy
- Methane gas captured from a landfill

**Currently LAGM has found the following to be examples of ineligible projects:**

- Compact fluorescent and LED, screw-in lamps
- Plug load devices
- Measures that are not permanently installed and can be easily removed
- Measures that save energy solely due to operational or behavioral changes
- Power factor correction, power conditioning
- Any measure that does not result in a decrease in energy consumption, including consumption from electricity, propane, natural gas, or water usage
  - Any measure that cannot be explained in terms of industry-standard engineering or scientific principles
  - Refrigerant charge (AC/Split Systems/Heat Pumps)

#### 4.4 Eligible Energy Project Costs and PACE Financing Amount

The energy project budget may include all hard and soft costs required to complete the energy project, such as installation/construction contract amount (materials and labor), engineer's energy analysis, other required design and engineering, project development fees, engineer or contractor's guarantee fees, LAGM fees, permit fees, surveys, legal fees, financing fees and any capitalized interest. The amount of PACE Financing shall be equal to or less than the amount of the eligible energy project costs.

LAGM will review the cost of the proposed energy project as compared to the current value of the property, to ensure it will be eligible under the valuation limits adopted in the applicable program report. LAGM will review both the Assessment-to-Value and the overall Loan-to-Value against the limits adopted by the member jurisdiction and included in their program report. Generally speaking:

- Property value may be determined by either (a) doubling the State Equalized Value (SEV) of the property or (b) the property owner providing an appraisal including the as-complete value completed within 12 months of the PACE financing closing date and prepared by an independent real estate appraisal firm. The Program Administrator may accept property valuations determined by alternative appraisal methods, as appropriate.

- The PACE financing generally may not exceed an Assessment-to-Value (“ATV”) of 25% of the as-completed property value, unless otherwise approved by the LAGM and the member jurisdiction. For example, a commercial building with an assessed or appraised value of \$1,000,000 would be limited to a maximum of \$250,000 of PACE Financing. PACE lenders may have additional limits based on their underwriting criteria.
- The PACE financing plus the outstanding principal amount of all mortgage liens secured by the property generally may not exceed a Loan-to-Value (“LTV”) of 95% of the as-completed property value, unless otherwise approved by the LAGM and the member jurisdiction. For example, if the owner of a commercial building with an assessed or appraised value of \$1,000,000 requests \$250,000 in PACE Financing, the property must have total outstanding mortgage loan balance(s) that are not greater than \$700,000 as of closing of the PACE Financing. PACE lenders may have additional limits based on their underwriting criteria.

Energy projects may qualify for and receive additional rebates and incentives. Property owners are encouraged to obtain all applicable government, utility provider or manufacturer rebates, and any other upfront cost reductions that can reduce the total energy project cost for purposes of calculating the amount of savings related to PACE Financing.

## 5.0 ENERGY AUDIT REQUIREMENTS

### 5.1 General Requirements

The Michigan PACE Statute requires that a baseline energy audit be conducted before an energy project is undertaken, to establish future energy savings. Even without this statutory requirement, LAGM would always recommend a property owner get an energy audit as a first step in determining whether a desired project is viable.

LAGM recommends that all energy audits be conducted, or reviewed, by a qualified, independent third-party. The cost of a third-party review of the assessment may be included in the PACE Financing amount.

In general, LAGM requires that all energy audits are completed consistent with guidance and principles determined by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), and meet the ASHRAE Level II Energy Audit. [See Appendix F: ASHRAE Audit standards and levels.](#)

LAGM may allow variance from this standard, upon the request of the property owner and on a project-by-project basis. For example, energy projects that include only an energy efficiency improvement type (such as a simple lighting fixture replacement project or the replacement of an old, inefficient boiler) can benefit from an expedited energy study. LAGM may authorize the use of an ASHRAE Level I Energy Audit.

All energy audits must demonstrate energy, water and/or operational savings. To the extent that the PACE project finances more than \$250,000, the energy audit must show a Savings-to-Investment (SIR) greater than one. The energy audit must be prepared and submitted by a qualified energy professional. An energy professional is defined a professional holding one or more of the following certifications:

- Certified Building Energy Audit Professional (BEAP) (offered by ASHRAE)
- Certified Energy Auditor (CEA) (offered by Association of Energy Engineers (AEE))
- Certified Energy Manager (CEM) (offered by AEE)
- Certified High-Performance Building Design Professional (HBDP) (offered by ASHRAE)
- Certified Measurement and Verification Professional (CMVP) (offered by AEE and Efficiency Valuation Organization)
- Licensed Architect
- Licensed Professional Engineer (P.E.)

The name, firm name, and credentials of the energy professional shall be included in the energy audit. If the property owner wants to engage a contractor with relevant demonstrated experience but without the qualification above, LAGM reserves the right to approve their participation, but approval must be sought and granted prior to proceeding.

## 5.2 Renewable Energy System, Single Measure Project

For energy projects consisting solely of a Renewable Energy System, LAGM may recognize a variance from the ASHRAE level II audit model. The proposed substitute energy audit must be prepared and submitted by a qualified professional and should address the following components:

- Site ambient conditions
- Location for the renewable energy system
- Energy system foundation
- Building characteristics
- Utility consumption profile of the site, including the site's historic energy use and cost
- Description of the proposed renewable energy generation system
- Projected energy production
- Projected energy and financial cost savings to be generated by the renewable energy project, including assumptions affecting the cost savings:
  - Weighted cost of energy saved and generated by the project
  - Cost savings to be realized from time-of-use and demand charge reductions
  - Utility tariff to be applied to the site and/or system following installation
  - Utility escalation rates
  - Tax benefits
  - Measure life
  - Maintenance expenses
- Assessment of total project capital cost utility tariffs and interconnections issues, including analysis of impacts of surplus energy generation by the renewable energy project
- Requirements to maintain optimized system performance
- Identification of an appropriate commissioning plan

LAGM is willing to work with the engaged contractor to ensure the final energy audit meets the needs of the project.

## 5.3 Useful Life

The energy audit shall contain the energy professional's calculation for the useful life of each of any proposed energy efficiency improvements and renewable energy systems. For energy projects consisting of more than one energy efficiency improvement or renewable energy system,



the energy audit should also show a combined weighted useful life. LAGM is willing to recognize both a straight-line average of the useful life or a blended useful life, giving varying weight to the individual energy efficiency improvements and renewable energy systems based on their cost as compared to the overall cost of the energy project.

The term of the PACE financing shall not exceed the lesser of the calculated useful life of the energy project or the limit contained in the member jurisdiction's program report, which is typically between 25 and 30 years.

## 6.0 SAVINGS-TO-INVESTMENT RATIO

For all energy projects financed with more than \$250,000 in assessments<sup>1</sup>, the baseline energy audit will need to demonstrate that the Energy Efficiency Improvements or Renewable Energy Systems will achieve sufficient savings to offset the cost of the energy project. Combined, the benefits must achieve a Savings-To-Investment Ratio (SIR) of greater than one. This SIR shall be guaranteed by the contractor pursuant to a savings guarantee as detailed in [Section 7](#) below.

### 6.1 Savings-To-Investment Ratio > 1.0 Calculation

LAGM assists property owners and their contractors in the evaluation of an energy project, its related costs and potential savings. Below is a guide to the calculation of the SIR:

### 6.2 Savings

To meet the statutory savings requirement, the energy, water, operations & maintenance, and other documentable operations cost savings and financing & tax benefits over the estimated useful life of the energy project must be greater than the direct installation cost of the improvements or the assessment amount. LAGM reserves the right to review proposed savings on a project-by-project basis, and will review in consultation with our member jurisdiction.

The total savings represents the projected annual energy, water, operations and maintenance cost savings, and financing and tax benefits attributed to the project. The cost savings calculations may be inflated based on documented inflation expectations established by historical prices and/or reasonable forecasts available from sources such as the US Energy Information Administration Annual Energy Outlook. Such savings will be inflated over a period of time equal to the useful life of the energy project installed.

An example of a financing benefit that may be approved for inclusion in the total savings is savings resulting from the use of PACE instead of more expensive financing, such as mezzanine debt (provided that this financing benefit is proven by means of the submission of a valid term sheet from an appropriate lender indicating the term and interest rate of such alternative financing).

Tax benefits may also be included in the total savings where they result from (i) depreciation of the asset underlying the energy project and (ii) any solar/renewable tax credits obtained by the installation of a Renewable Energy System. However, LAGM has not previously recognized

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<sup>1</sup> For clarity, Section 6 and its requirements do not pertain to Energy Projects financed with \$250,000 or less in assessment. Please refer to Section 10.1 below for a discussion of PACE Express projects.

savings generated from the tax treatment of the energy project and the PACE financing (i.e. “on balance sheet” vs. “off balance sheet” accounting treatment).

### 6.3 Investment

LAGM includes both hard and soft costs when determining the total cost of an energy project. These costs should be included in the energy audit but may be refined further by the property owner and contractor through the development of construction bids. Further, LAGM will work with the PACE lender to identify related soft costs or financing costs that are related to the direct installation of the project and are to be included in the overall cost of the energy project. The amount invested must be less than the amount of the savings, on an annual basis, amortized over the term of the PACE financing.

For example, if the PACE financing is in the amount of \$1,000,000, the total savings must at least be greater than \$1,000,000 (and depending on the agreement with the parties to the savings guarantee, the SIR may be required to exceed \$1,000,000 plus interest over the life of the loan).

## 7.0 SAVINGS GUARANTEE

Michigan's PACE Statute requires that, for an energy project with more than \$250,000 in assessments<sup>2</sup>, the contractor must guarantee to the property owner that the energy project will achieve an SIR of greater than one (1) and agree to pay the property owner, on an annual basis, any shortfall in savings below this level.

LAGM requires, as a prerequisite to closing, that the property owner and contractor provide evidence of such agreement, which is known as a savings guarantee.

The savings guarantee must provide that the contractor will pay the owner any shortfall between the annual guaranteed savings and the savings derived from the energy project for each year during the term of the savings guarantee. The written savings guarantee must cover a period of time no shorter than the term of the PACE financing.

LAGM recommends the savings guarantee include the contractor or project engineer's guarantees of the following:

- Description of energy efficiency project(s) or renewable energy system(s)
- Estimated total project capital cost for the energy project
- Annual and total electrical savings (kWh), natural gas savings (mcf), water savings (gallons), electrical demand reduction (kW), renewable electrical production (kWh) and operational cost (\$) savings
- Projected annual utility and operating cost savings (in dollars \$) over the term of the PACE financing that are subject to the savings guarantee
- Projected tax benefits that Applicant may accrue by installing the energy project
- Finance Savings - Financial gains estimated due to taking PACE financing rather than other forms of financing

The savings guarantee must also reference the appropriate energy audit as a source for the estimates noted above.

A sample savings guarantee can be found in [Appendix E](#).

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<sup>2</sup> For clarity, Section 7 and its requirements do not pertain to Energy Projects financed with \$250,000 or less in assessment. Please refer to Section 10.1 below for a discussion of PACE Express projects.

## 8.0 MORTGAGE LENDER CONSENT

All holders of a mortgage secured against the property must provide their consent to PACE financing as a prerequisite to closing. This statutory requirement serves as both a notice requirement and a protection for lenders who already have a security interest in the property.

There are many reasons a mortgage holder may consent to PACE financing, including an increased value to the underlying property, or increased cash flow to the property owner, resulting in a better ability to repay all debt. It is important to note that in the event of a default of the PACE financing and a subsequent tax foreclosure, the PACE financing will not accelerate and only the delinquent amount will enjoy super-priority lien status.

However, mortgage holders often do not initially understand the nature of the PACE assessment, and fear that it will represent a super-priority compared to their security interest. For that reason, LAGM frequently assists the property owner and PACE lender in seeking the consent of their senior lender. LAGM always recommends that the property owner not seek the lender consent on their own. LAGM is happy to provide a list of mortgage lenders who have previously consented on projects financed in Michigan.

A copy of the Mortgage Lender Consent template can be found in [Appendix G](#).

## 9.0 PROJECT COMPLETION AND ONGOING REPORTING

### 9.1 Installation Verification

LAGM requires all property owners to submit some form of notice that the energy project has been completed. LAGM is willing to work with the property owner and contractor as to the form this will take. If the property owner and contractor have agreed to a formal commissioning, or engineering commissioning, LAGM will accept that report, as approved by the property owner, as confirmation the energy project has been installed.

Alternatively, at project closing, LAGM provides a generic Installation Verification form that can be used by the property owner and contractor to give notice to LAGM that the energy project is complete. A copy of the Installation Verification form is attached as [Appendix H](#).

### 9.2 Monitoring

LAGM requires all property owners, as a prerequisite to close a PACE financing, to create an account on EPA's Energy Star Portfolio Manager, and link this to LAGM's account. Energy Star Portfolio Manager is a free website that enables property owners to easily track energy and water use, compare their buildings against benchmarks, and determine Energy Star Ratings. Property owners can use Portfolio Manager to track improvements in building performance following the completion of an energy project. LAGM requires the following:

- Enter into Portfolio Manager at least twelve consecutive months of utility bills from the billing periods prior to project completion
- Share with LAGM their Portfolio Manager (username: LEP) record for the subject property (see Appendix I for instructions)
- On an ongoing basis following project completion, enter into Portfolio Manager their utility bills from subsequent billing periods.

## 10.0 SPECIAL TYPES OF ENERGY PROJECTS

### 10.1 PACE Express

LAGM has designed an expedited, simplified process for PACE projects that will result in an assessment of \$250,000 or below, as these have fewer statutory requirements under Michigan law. Known as “PACE Express,” the program is designed to make PACE accessible to more property owners by reducing LAGM fees and legal costs. In order to encourage lenders and property owners to use PACE Express, LAGM has prepared a locked model closing document packet that several PACE lenders have agreed to use, which will result in an expedited closing process for project financing.

In order to secure financing via PACE Express, the property owner must still submit an energy audit for the energy project that evaluates the proposed Energy Efficiency Improvements or Renewable Energy Resources the property owner is seeking to finance. The energy audit should be similar to the standards listed above, and conform to the requirements for an ASHRAE Level 1 report.

LAGM recommends contractors demonstrate that PACE Express eligible projects are financially beneficial to the property owner. Additionally, PACE lender underwriting requirements may require that such projects achieve a SIR that is greater than one (1).

Further details on PACE Express can be found in the current PACE Express Policy, included below as [Appendix J](#).

### 10.2 New Construction Projects & Gut Rehab Projects

New construction and gut rehab projects, unlike existing building retrofits, may not benefit from a history of pre-improvement energy consumption data from which baseline energy consumption can be formulated. Without the benefit of this baseline building performance data, additional Energy Assessment<sup>3</sup> guidelines are necessary. LAGM provides two pathways to measure the incremental improvements over a baseline: a gut rehab path and/or a new construction path.

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<sup>3</sup> Energy Assessment is defined as an assessment of the energy efficiency, water conservation or renewable energy measures proposed for the PACE project conducted by the project contractor or professional engineer in compliance with the Property Assessed Clean Energy Act of 2010.

## Gut Rehab Path

In the case where there is an existing structure, equipment, and/or a property that has been in prior use which can theoretically be restored to its prior use or converted to a new use, the baseline may be modeled on the efficiency of the existing structure and equipment.

For example, a 100-year-old structure that has existing windows and building envelope, an existing boiler, and existing lights would model the energy savings based on improvement from these existing features, as if the equipment was still in use.

PACE projects following the gut rehab path must submit an energy model that is similar to an ASHRAE Level II audit as part of the Energy Assessment, including useful life calculations of each proposed installed Energy Efficiency Improvement.

## New Construction Path

PACE projects electing to follow the new construction path must demonstrate that the PACE project exceeds the applicable IECC or ASHRAE 90.1 standard under Michigan code<sup>4</sup> by means of an energy model similar to an ASHRAE Level II energy audit that demonstrates the savings of each Energy Efficiency Improvement. Each Energy Efficiency Improvement that is financed using PACE financing must meet one or more of the following requirements to demonstrate savings:

- The Energy Efficiency Improvement exceeds Michigan code;
- The Energy Efficiency Improvement results in a building that is more energy- and/or water-efficient than is required by Michigan code; or
- The Energy Efficiency Improvement produces renewable energy (including, but not limited to solar, wind, or geothermal energy).

New construction projects that only finance renewable energy improvements will require an energy model demonstrating savings and the useful life of the renewable energy improvements, but will not require energy modeling similar to an ASHRAE Level II energy audit.

Further details on how to conduct the necessary energy audit and SIR calculations for new construction or gut-rehab projects can be found in [Appendix K](#).

## 10.3 Retroactive Projects (Refinancing)

Completed installations of eligible energy projects are eligible for retroactive PACE financing. PACE can be used to finance or refinance energy projects after the property owner completes the

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<sup>4</sup> The State of Michigan has effectuated the 2015 IECC, which incorporates the ASHRAE 90.1-2013 standard.



installation of the designed energy efficiency improvements or renewable energy systems. Property owners seeking to finance or refinance completed energy projects should contact LAGM to learn more about whether this is possible, as retroactive Energy Efficiency Improvement are subject to the following additional requirements:

- All retroactive PACE financings must occur within thirty-six (36) months of the time elapsed between the completion of the installation and the desired close of the PACE financing.
- For any retroactive energy project, the term of the PACE financing will be reduced to account for any Energy Efficiency Improvement or Renewable Energy Systems reduction in the useful life that has elapsed between the time of installation and the close of the PACE financing. For example, if closing occurs one year after installation of the Energy Efficiency Improvement or Renewable Energy Systems, the eligible term of the financing will be reduced by one year.

### Required Documentation

In addition to the applicable documentation necessary for LAGM to review an energy project as detailed above, and including the Application, an energy audit, savings guarantee (if applicable), the property owner will need to provide additional documentation as requested by LAGM, including but not limited to:

- Documentation that provides evidence of installation of the Energy Efficiency Improvement or Renewable Energy System
- Completion date for the energy project

## 11.0 CHANGE ORDERS AND AMENDMENTS

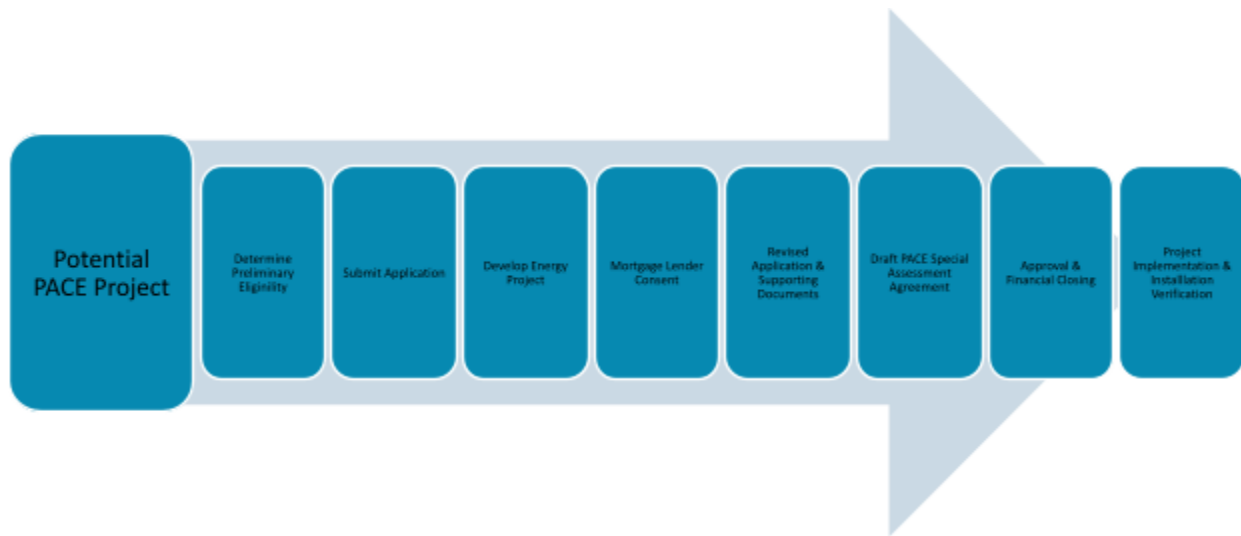
Any change orders that result in an alteration of the anticipated energy and water savings attributed to the energy project must be pre-approved by LAGM to ensure that the project remains consistent with the requirements as set forth in the PACE Statute and applicable program report. The property owner shall provide documentation of the change as follows:

- Change in project scope and description of the changes
- Revised project budget to account for changes in costs
- Revised energy and operations savings estimates, as evidenced in a revised energy audit
- Amended savings guarantee (if the project was originally over \$250,000 or if total project cost exceeds \$250,000 with the change order) executed by property owner and contractor
- Approval of the change by the PACE lender

A property owner who requires a change order is required to complete a summary of the above and submit it to LAGM, who will work with all parties to amend the existing PACE special assessment agreement, if necessary.

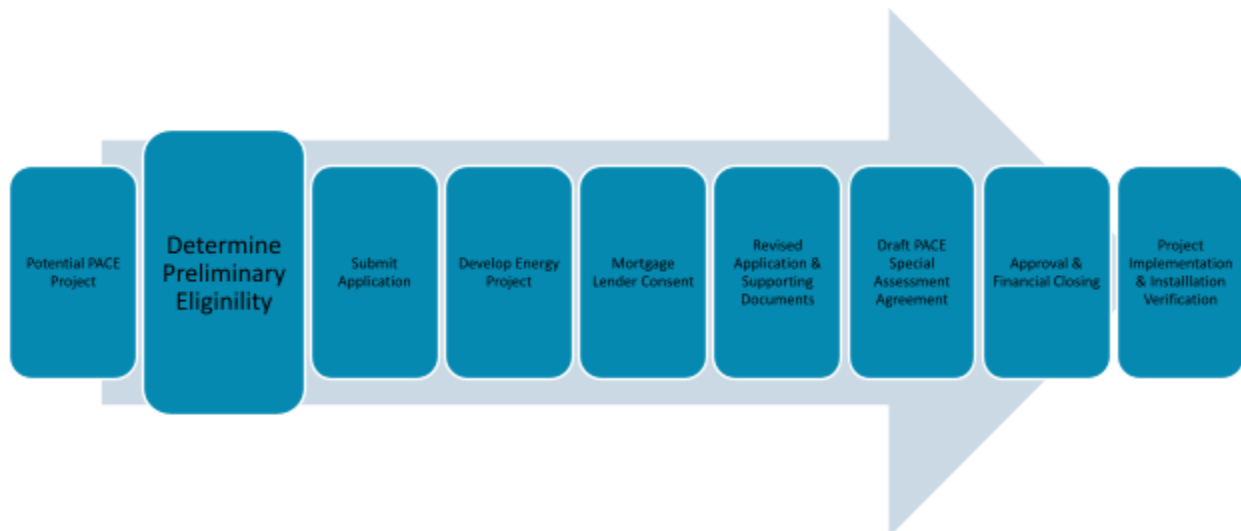
## 12.0 PACE PROJECT REVIEW PROCESS

The process discussed below should not be viewed as the only path a property owner may take to develop a PACE project and close on PACE Financing. Rather, this is the sequencing of the various elements which must be reviewed and accomplished in order to close a PACE Financing. LAGM routinely works with property owners to ensure their project can navigate the process, no matter what step or stage they are in when the first connect with LAGM.



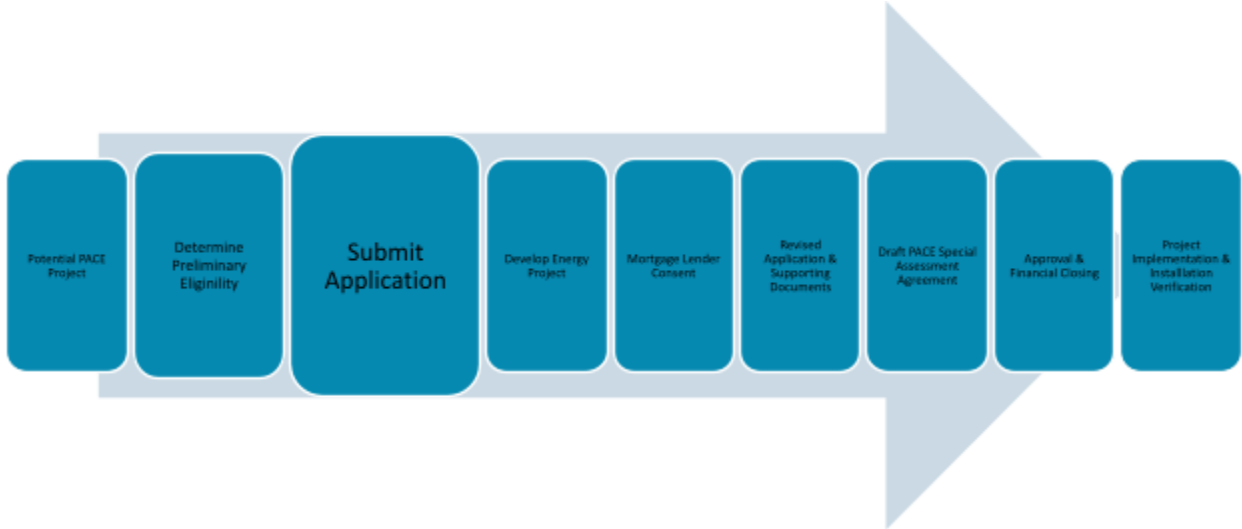
### 12.1 Potential PACE project

Property owners who have an interest in implementing an Energy Project can consider PACE financing. Property owners may want to engage with a contractor at this step for assistance in designing the project or identifying potential improvements that could be included.



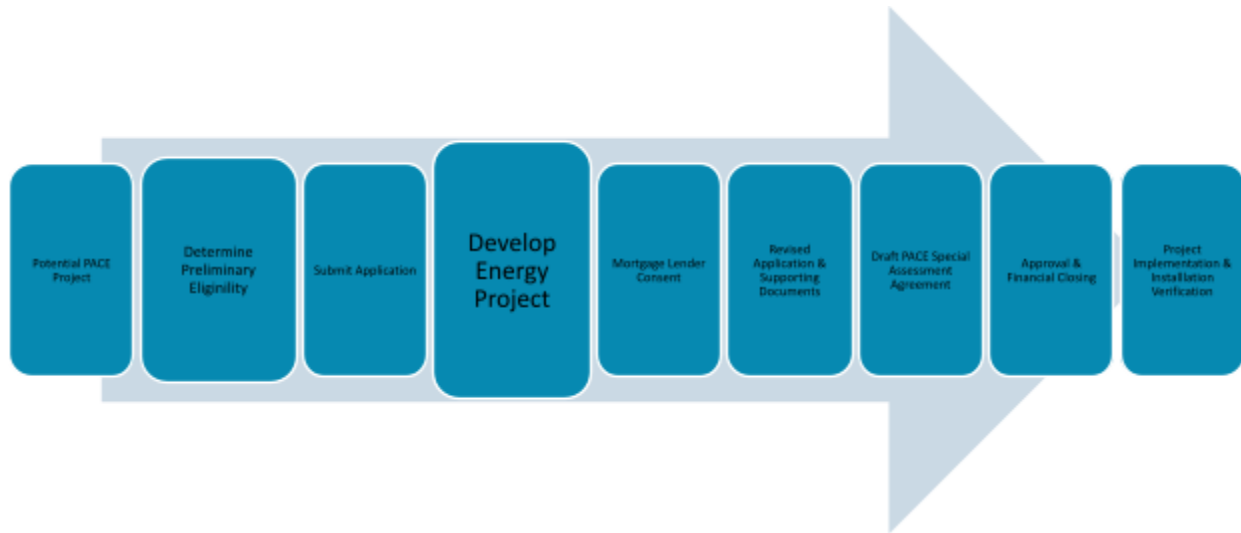
### 12.2 Determine Eligibility: Preliminary

Property owners are encouraged to reach out to LAGM for a preliminary discussion about whether a potential project is eligible or if there are any immediate concerns. Property owners should complete the online interest form available at <https://leanandgreenmi.com/apply>. This will help give property owners the opportunity to establish eligibility for participation in PACE before they invest in project development. The information collected in this step will also help LAGM verify whether the property is located within a participating member jurisdiction; if it is not, LAGM will provide guidance on what steps a local government can take to assist in bringing PACE to their community.



### 12.3 Submit An Application

The review process begins when the property owner submits a program application to LAGM. The application is general in nature and meant to identify all parties to the proposed PACE project, including the property owner, PACE lender, and contractor. The application also contains initial information about the property and the proposed project. LAGM treats the application as a living document and would prefer to have it submitted early even if not all of the information is available at the time. It is the first step in a process that ideally will end with LAGM able to approve and recommend the PACE project to our member jurisdiction.



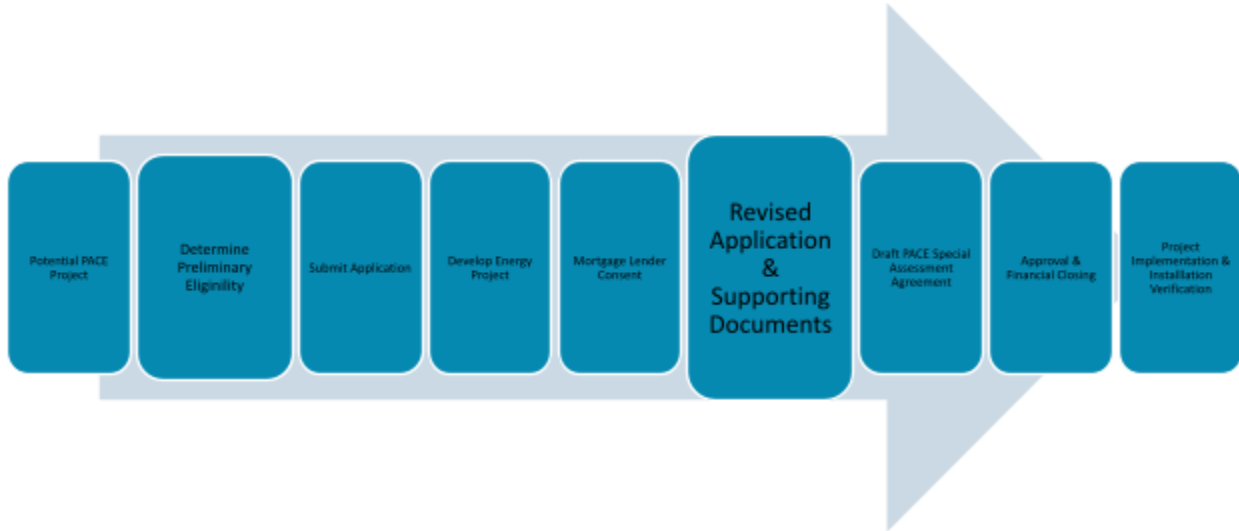
## 12.4 Develop Energy Project

Applicants should work with LAGM and their desired contractor to develop and more clearly define the PACE project. Applicants should obtain an energy audit at this point in the process, as previously described in [Section 5.0 Eligibility Requirements](#) above. Following the energy audit, Applicants will work with their contractors to determine the final scope, project cost, and schedule. LAGM works to develop an active marketplace for PACE lenders and maintains a list of PACE lenders who have expressed an interest in lending in Michigan. This information is available to all Applicants upon request. Applicants are free to work with any lender who will provide financing in accordance with LAGM’s eligibility requirements. (See [Section 15.0 PACE Lenders](#), below.) The PACE lender will conduct its own review of the PACE project according to its underwriting requirements.



### 12.5 Mortgage Lender Consent

As project development progresses, LAGM recommends the Applicant, with the assistance of LAGM or the PACE lender, approach any current mortgage holder(s) to acquire written mortgage lender consent for the proposed PACE Financing. (See [Section 8.0 Mortgage Lender Consent](#)). Mortgage lender consent is required to close a PACE Financing under the Michigan PACE Statute.



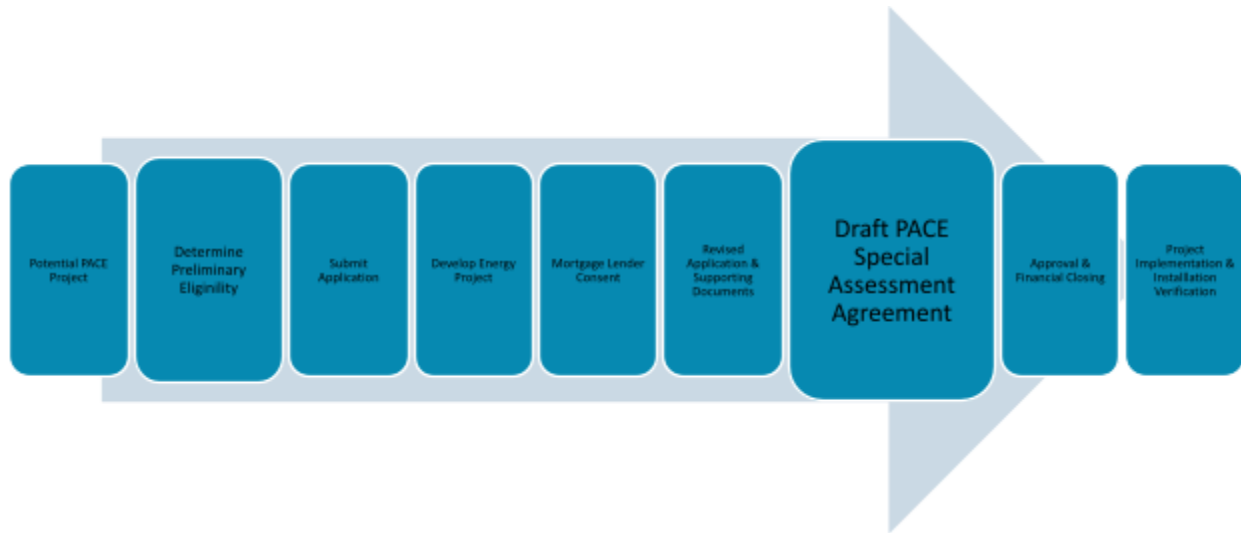
### 12.6 Submit Revised Application with Supporting Documentation

When the pre-development work for the PACE project is substantially complete, Applicants may need to revise the Application. The Applicant should also be in position to provide supporting documentation to LAGM as it becomes available. A list of the necessary support documents is included on the Application, and LAGM is happy to assist the property owner and PACE lender in gathering it.

The following supporting documentation is necessary to review and recommend an energy project for financing:

- **Application** – Revised or completed as necessary by the Applicant, with all applicable fields filled out.
- **Title Report** – disclosing all current mortgage and lien holders on the property and that there are no involuntary liens on the property (the Title Report must be issued not more than 30 days prior to closing of PACE Financing).
- **Appraisal or Assessed Value** – as indicated on the Application by the Applicant, which will indicate the basis for the Eligible Property valuation. If the Applicant selects appraised value, a copy of such appraisal shall be submitted along with its application.
- **Energy Audit** – A baseline Energy Audit and assessment of the proposed Energy Efficiency Improvements and Renewable Energy Systems, establishing the future savings of the energy project. This shall be completed by a qualified contractor or engineer, as detailed below in [Section 5.0 Energy Audit Requirements](#).
- **Savings Guarantee** – A written guarantee provided by the contractor to the property owner that the energy project energy and water conservation utility bill savings and other operational savings achieve a Savings-To-Investment Ratio greater than 1.0. The contractor will guarantee to pay annually the owner any shortfall in savings below this 1.0 level. A sample savings guarantee can be found in [Appendix E](#).
- **Mortgage Loan Balance(s)** – A copy of the most recent mortgage loan statement(s) for all such loans outstanding on the property in order to determine the current loan-to-value ratio.
- **Mortgage Lender Consent** – evidenced by written consent from the existing mortgage holder(s) on the Eligible Property for the proposed PACE project. (See [Section 8.0 Mortgage Lender Consent](#) for further detail.)

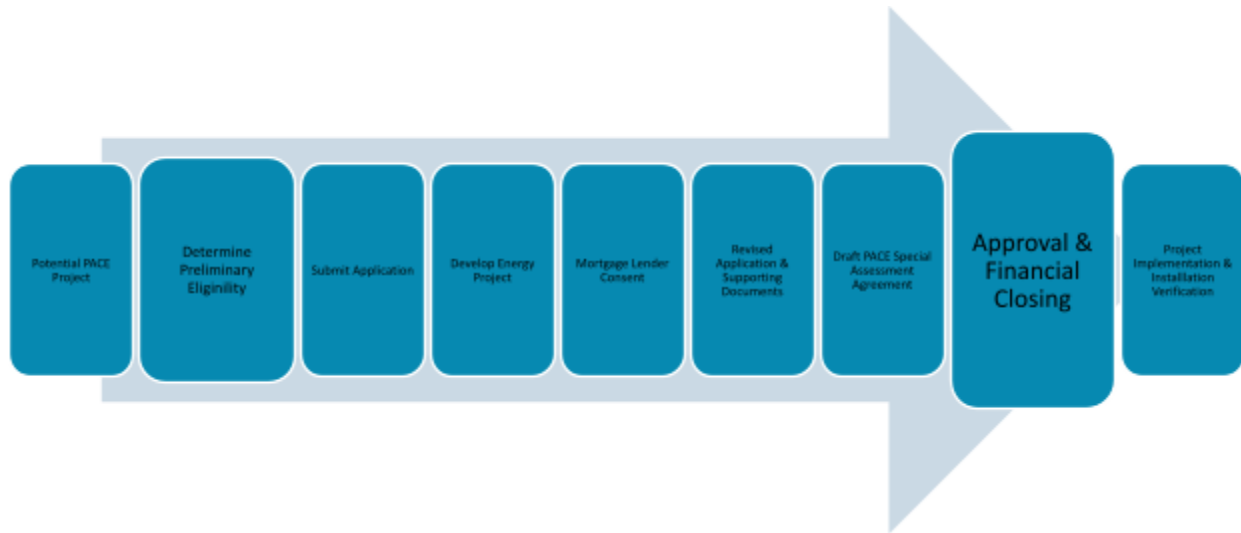
Once a complete Application is received, LAGM will review it for completeness and accuracy of the information and documents enclosed to ensure they comply with the PACE program report for the applicable member jurisdiction. If LAGM finds the Applicant's Application is incomplete, LAGM will work with the Applicant who will have the opportunity to complete any missing information.



### 12.7 Draft PACE Special Assessment Agreement

LAGM will prepare a draft PACE special assessment agreement for review by both the property owner and PACE lender. A model of the PACE special assessment agreement is included in the program report adopted by member jurisdictions. Comments received from the PACE lender or property owner will be reviewed by LAGM, and, if necessary, with the member jurisdiction for approval. Once the terms of the PACE special assessment agreement are completed, LAGM will prepare an execution version and coordinate the signature process. Upon closing, LAGM will record the PACE special assessment agreement with the appropriate register of deeds.

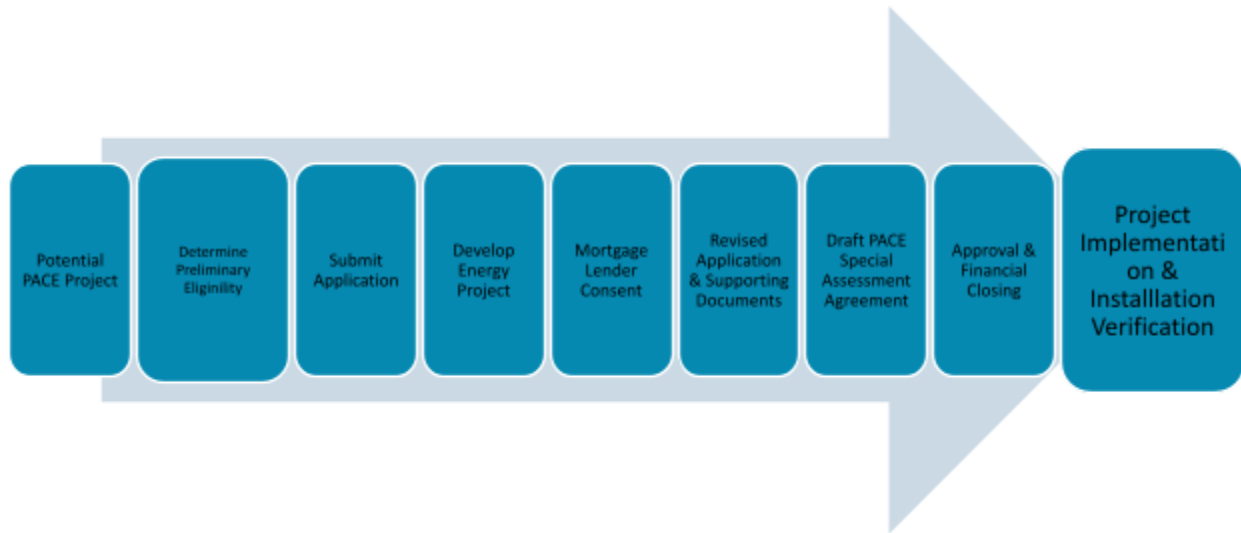




## 12.8 Approval & Financial Closing

LAGM will coordinate with our member jurisdiction’s authorized official to review the energy project, including the Application, supporting documentation, and PACE special assessment agreement. Upon approval of the energy project by the authorized official, LAGM will work with the property owner and PACE lender to set a date for closing.

In addition to any financing agreements required by the PACE lender, the PACE special assessment agreement will be executed by the PACE lender, property owner, and member jurisdiction, in conjunction with the PACE Financing closing. The PACE special assessment agreement is a contract between the member jurisdiction, the PACE lender, and the property owner that establishes the PACE Special Assessment against the property, and sets forth the repayment terms and enforcement mechanisms for any delinquencies. Following the execution and payment of all applicable fees, the Program Administrator will record the PACE special assessment agreement with the register of deeds in the jurisdiction in which the property owner’s Eligible Property is located.



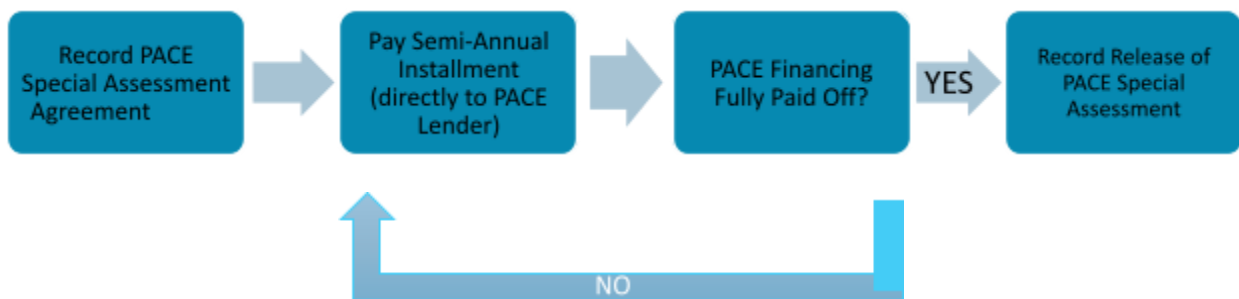
## 12.9 Project Implementation & Installation verification

Following the close of the PACE financing and receipt of the proof of recording of the special assessment agreement, the property owner will be able to draw down funds and begin the construction of the energy project. The property owner or contractor will draw funds for the PACE project directly from the PACE lender according to terms agreed to between those parties.

Upon completion of the construction or implementation of the PACE project, the contractor and property owner will submit to LAGM a completed Installation Verification Form, which will be provided upon request and included in the closing document package. If a full commissioning and commissioning report are required by any other party, it may be submitted in lieu of the Verification Form.

## 13.0 ADMINISTERING THE PACE ASSESSMENT

LAGM is available to assist the property owner, PACE lender, and member jurisdiction with any issue that may arise during the repayment period of PACE financing. The payment process and enforcement are well defined in the PACE special assessment agreement ([See Appendix D](#)) and are fairly automatic short of an unforeseen problem.



### 13.1 Repayment of the PACE Financing

The process for repayment of PACE Financing, including remedies for delinquency and defaults, will be set forth in the PACE special assessment agreement related to the applicable PACE Financing. The Michigan PACE Statute allows for installments to be billed and collected directly by the PACE lender, whereby the property owner makes payments of semi-annual installments (or other periodic payment as specified in the PACE special assessment agreement that is reasonably related to Michigan's summer and winter tax bill schedule) directly to the PACE lender or its servicer.

Nothing in this program manual may supersede or alter the terms and conditions contained in a PACE special assessment agreement entered into between a property owner, a PACE lender, and the member jurisdiction.

### 13.2 Delinquency or failure to pay

As long as payments are made in accordance with the terms of the PACE Special Assessment, the process will continue until the assessment is paid in full. If a property owner is delinquent or fails to pay a Semi-Annual Installment, the enforcement mechanism is contained in the PACE special assessment agreement. In general, the PACE lender must give notice to the member

jurisdiction. The member jurisdiction will place the delinquent amount on the next tax bill, and will enforce the collection of the special assessment in line with the Michigan General Property Tax Act.

### 13.3 Release of PACE Special Assessment

Upon notice from the PACE lender that the PACE financing has been paid in full, LAGM will coordinate with the PACE lender and member jurisdiction to execute and record a Discharge and Release of Special Assessment, which will terminate any further liability under the special assessment agreement.

## **14.0 PARTICIPATING CONTRACTORS**

Lean & Green Michigan seeks to facilitate creation and availability of good, locally based jobs in member jurisdictions for contractors and their employees. As such, LAGM offers contractor training and maintains a list of contractors who have completed the training on our website. All projects financed through LAGM must be installed by experienced commercial contractors; however, contractors are not required to complete our contractor training. The property owner is free to work with any commercial contractor, and is required to ensure that qualified, reputable contractors are chosen to perform the work on the project according to plan, specifications, and requirements set forth in this Program Manual.

Information for and about PACE contractors can be found at:

<https://leanandgreenmi.com/contractors>

## **15.0 PACE LENDERS**

Lean & Green Michigan operates an “open market” PACE program, whereby property owners have the flexibility to select their preferred PACE lender for a PACE project on their Eligible Property. The open market model gives property owners access to a range of private lenders who offer competitive rates, financing terms, and conditions. Public funds are not anticipated to be made available for funding PACE projects, though units of government are not prohibited from participating as PACE lenders. No exclusivity will be provided to PACE lenders, and the Applicants will retain the right to choose the type and provider of financing that works best for their business needs.

Information for and about PACE lenders can be found at: <https://leanandgreenmi.com/lenders>.

## 16.0 PROGRAM FEES

LAGM's most current chart of fees and how to calculate them is attached as [Appendix L](#) and may be amended from time to time. All fees are based on, and solely charged to, projects which close a PACE financing, and only at the time of closing. LAGM does not charge fees to our member jurisdictions. LAGM does not charge fees to contractors, lenders, or property owners for the exploration or development of projects.

### 16.1 Application Fee

LAGM does not collect an application fee in connection with an energy project, unless required to under the program report adopted by the applicable member jurisdiction.

### 16.2 Closing Fees

The closing fee is a one-time administration and program fee paid to LAGM upon the closing of PACE financing. This fee may be capitalized into the PACE financing amount for the PACE project. The closing fee is determined based on the hard and soft costs of the energy project. In addition to the closing fee, a legal fee is also due at the time of close.

- For projects with more than \$250,000 in PACE Assessment, please refer to the PACE Fees section of [Appendix L](#).
- For projects with less than \$250,000 in PACE Assessment, please refer to the PACE Express Fees section of [Appendix L](#).

### 16.3 On-Going Administration Fee

LAGM charges an on-going administration fee of 25 basis points added to the interest charged by the lender on the energy project. This fee is capped and is only charged on the first \$10,000,000 of eligible costs, and follows the repayment of the PACE assessment. If the PACE assessment has \$20,000,000 in eligible costs, then the ongoing administration fee would be 12.5 basis points (25 bps on the first \$10M and 0 bps on the remaining \$10M). Note that if the PACE assessment is paid off early, there would be no remaining on-going administration fee.

The on-going administration fee is not charged on PACE Express projects.

## 17.0 MISCELLANEOUS AND DISCLOSURES

- Lean & Green Michigan, as Program Administrator, recommends all parties be represented by legal counsel. LAGM does not provide legal advice, nor does it form any legal representation with property owners or their tenants, PACE lenders, contractors, energy service companies, or utilities.
- LAGM does not provide any accounting advice regarding how a property owner should treat the PACE financing for accounting purposes.
- LAGM has the right to review all projects for eligibility and make recommendations to the member jurisdiction, who may fully rely on LAGM's recommendation, to approve or reject energy projects for PACE financing according to the standards and criteria set forth in the PACE Statute, applicable program report, and this program manual.
- The authorized official of the member jurisdiction in which a property is located retains ultimate discretion as to whether to approve a PACE financing and may enter into a PACE special assessment agreement at their sole discretion.
- LAGM does not endorse any particular PACE lender, contractor, engineering firm, manufacturer, product, or system design.
- LAGM is not responsible for any tax liability imposed on the recipient as a result of the payment.
- LAGM MAKES NO REPRESENTATION OR WARRANTY, AND ASSUMES NO LIABILITY WITH RESPECT TO THE QUALITY, SAFETY, PERFORMANCE, OR OTHER ASPECT OF ANY DESIGN, CONSULTING, PRODUCT, SYSTEM, EQUIPMENT, OR APPLIANCE INSTALLED OR RECEIVED AND EXPRESSLY DISCLAIM ANY SUCH REPRESENTATIONS, WARRANTIES, AND LIABILITY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Please contact your contractor for detailed manufacturer equipment warranties.
- LAGM does not guarantee that installation and operation of energy efficient equipment will result in reduced usage or in cost savings to a property owner or any occupants of an Eligible Property.
- LAGM is not liable for any damages, including any incidental or consequential damages, arising out of the operation or malfunction of the products, equipment, or appliances, or the installation thereof related to an energy project.



- Unless notified otherwise in writing, LAGM reserves the right to publicize participation in the program or closing of a PACE financing.
- A representative of LAGM may schedule a site visit to verify that qualified products, systems, equipment, or appliances were installed.

## APPENDIX A: MICHIGAN PACE STATUTE

### PROPERTY ASSESSED CLEAN ENERGY ACT

#### Act 270 of 2010

AN ACT to authorize local units of government to adopt property assessed clean energy programs and to create districts to promote the use of renewable energy systems and energy efficiency improvements by owners of certain real property; to provide for the financing of such programs through voluntary property assessments, commercial lending, and other means; to authorize a local unit of government to issue bonds, notes, and other evidences of indebtedness and to pay the cost of renewable energy systems and energy efficiency improvements from the proceeds thereof; to provide for the repayment of bonds, notes, and other evidences of indebtedness; to authorize certain fees; to prescribe the powers and duties of certain governmental officers and entities; and to provide for remedies.

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

*The People of the State of Michigan enact:*

#### **460.931 Short title.**

Sec. 1. This act shall be known and may be cited as the "property assessed clean energy act".

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

#### **460.933 Definitions.**

Sec. 3. As used in this act:

(a) "Anaerobic digester" means a device for optimizing the anaerobic digestion of biomass for the purpose of recovering biofuel for energy production.

(b) "Anaerobic digester energy system" means an anaerobic digester and the devices used to generate electricity or heat from biogas produced by the anaerobic digester or to store the biogas for the future generation of electricity or heat.

(c) "District" means a district created under a property assessed clean energy program by a local unit of government that lies within the local unit of government's jurisdictional boundaries. A local unit of government may create more than 1 district under the program, and districts may be separate, overlapping, or coterminous.

(d) "Energy efficiency improvement" means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following:

(i) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.

(ii) Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.

(iii) Automated energy control systems.

(iv) Heating, ventilating, or air-conditioning and distribution system modifications or replacements.

(v) Caulking, weather-stripping, and air sealing.

(vi) Replacement or modification of lighting fixtures to reduce the energy use of the lighting system.

(vii) Energy recovery systems.

(viii) Day lighting systems.

(ix) Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.

(x) Measures to reduce the usage of water or increase the efficiency of water usage.

(xi) Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

(e) "Energy project" means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system or anaerobic digester energy system.

(f) "Governing body" means the county board of commissioners of a county, the township board of a township, or the council or other similar elected legislative body of a city or village.

(g) "Local unit of government" means a county, township, city, or village.

(h) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination thereof. However, person does not include a local unit of government.

(i) "Property" means privately owned commercial or industrial real property located within the local unit of government.

(j) "Property assessed clean energy program" or "program" means a program as described in section 5(2).

(k) "Record owner" means the person or persons possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the county register of deeds.

(l) "Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

(i) Biomass.

(ii) Solar and solar thermal energy.

(iii) Wind energy.

(iv) Geothermal energy.

(v) Methane gas captured from a landfill.

(m) "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 use 1 or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator or digester.

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010;--Am. 2017, Act 242, Eff. Mar. 21, 2018.

#### **460.935 Property assessed clean energy program; establishment by local unit of government;**

##### **contract with record owner of property; financing.**

Sec. 5. (1) Pursuant to the procedures provided in section 7, a local unit of government may establish a property assessed clean energy program and may, from time to time, create a district or districts under the program.

(2) Under a program, the local unit of government may enter into a contract with the record owner of property within a district to finance or refinance 1 or more energy projects on the property. The contract may provide for the repayment of the cost of an energy project through

assessments upon the property benefited. The financing or refinancing may include the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the record owner pursuant to the installation on a specific or pro rata basis, as determined by the local unit of government.

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

**460.937 Establishment; actions to be taken by local unit of government; adoption or amendment of resolution.**

Sec. 7. (1) To establish a property assessed clean energy program, the governing body of a local unit of government shall take the following actions in the following order:

(a) Adopt a resolution of intent that includes all of the following:

(i) A finding that the financing of energy projects is a valid public purpose.

(ii) A statement of intent to provide funds for energy projects, which may be repaid by assessments on the property benefited, with the agreement of the record owners.

(iii) A description of the proposed arrangements for financing the program.

(iv) The types of energy projects that may be financed. (v) Reference to a report on the proposed program as described in section 9(1) and a location where the report is available pursuant to section 9(2).

(vi) The time and place for a public hearing on the proposed program. (b) Hold a public hearing at which the public may comment on the proposed program, including the report required by section 9.

(c) Adopt a resolution establishing the program and setting forth its terms and conditions, including all of the following:

(i) Matters required by section 9 to be included in the report. For this purpose, the resolution may incorporate the report or an amended version thereof by reference.

(ii) A description of which aspects of the program may be amended without a new public hearing and which aspects may be amended only after a new public hearing is held.

(2) A property assessed clean energy program may be amended by resolution of the governing body. Adoption of the resolution shall be preceded by a public hearing if required pursuant to subsection (1)(c).

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

**460.939 Report; contents; availability.**

Sec. 9. (1) The report on the proposed program required under section 7 shall include all of the following:

(a) A form of contract between the local unit of government and record owner governing the terms and conditions of financing and assessment under the program.

(b) Identification of an official authorized to enter into a program contract on behalf of the local unit of government.

(c) A maximum aggregate annual dollar amount for all financing to be provided by the local unit of government under the program.

(d) An application process and eligibility requirements for financing energy projects under the program. (e) A method for determining interest rates on assessment installments, repayment periods, and the maximum amount of an assessment.

(f) Explanation of how assessments will be made and collected consistent with section 13(2).  
(g) A plan for raising capital to finance improvements under the program. The plan may include any of the following:

(i) The sale of bonds or notes, subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(ii) Amounts to be advanced by the local unit of government through funds available to it from any other source.

(iii) Owner-arranged financing from a commercial lender. Under owner-arranged financing, the local unit of government may impose an assessment pursuant to section 11 and forward payments to the commercial lender or the record owner may pay the commercial lender directly.

(h) Information regarding all of the following, to the extent known, or procedures to determine the following in the future:

(i) Any reserve fund or funds to be used as security for bonds or notes described in subdivision (g). (ii) Any application, administration, or other program fees to be charged to record owners participating in the program that will be used to finance costs incurred by the local unit of government as a result of the program.

(i) A requirement that the term of an assessment not exceed the useful life of the energy project paid for by the assessment.

(j) A requirement for an appropriate ratio of the amount of the assessment to the assessed value of the property.

(k) A requirement that the record owner of property subject to a mortgage obtain written consent from the mortgage holder before participating in the program.

(l) Provisions for marketing and participant education.

(m) Provisions for adequate debt service reserve fund.

(n) Quality assurance and antifraud measures.

(o) A requirement that a baseline energy audit be conducted before an energy project is undertaken, to establish future energy savings. After the energy project is completed, the local unit of government shall obtain verification that the renewable energy system, anaerobic digester energy system, or energy efficiency improvement was properly installed and is operating as intended.

(p) For an energy project financed with more than \$250,000.00 in assessments, both of the following:

(i) A requirement for ongoing measurements that establish the savings realized by the record owner from the energy project.

(ii) A requirement that, in the contract for installation of the energy project, the contractor guarantee to the record owner that the energy project will achieve a savings-to-investment ratio greater than 1 and agree to pay the record owner, on an annual basis, any shortfall in savings below this level.

(2) The local unit of government shall make the report available for review on the local unit of government's website or at the office of the clerk or the official authorized to enter contracts on behalf of the local unit of government under the property assessed clean energy program.

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010;--Am. 2017, Act 242, Eff. Mar. 21, 2018.

#### **460.941 Imposition of assessment; written contract; verification.**

Sec. 11. (1) A local unit of government may impose an assessment under a property assessed clean energy program only pursuant to a written contract with the record owner of the property to be assessed.

(2) Before entering into a contract with a record owner under a program, the local unit of government shall verify all of the following:

(a) That there are no delinquent taxes, special assessments, or water or sewer charges on the property.

(b) That there are no delinquent assessments on the property under a property assessed clean energy program.

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

**460.943 Assessment as lien against property; installments to be included in summer and winter tax bill.**

Sec. 13. (1) An assessment imposed under a property assessed clean energy program, including any interest on the assessment and any penalty, constitute a lien against the property on which the assessment is imposed until the assessment, including any interest or penalty, is paid in full. The lien runs with the property and has the same priority and status as other property tax and assessment liens. The local unit of government has all rights in the case of delinquency in the payment of an assessment as it does with respect to delinquent property taxes. When the assessment, including any interest and penalty, is paid, the lien shall be removed from the property.

(2) Installments of assessments due under a program shall be included in each summer and winter tax bill issued under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, and shall be collected at the same time and in the same manner as taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. Alternatively, installments may be billed and collected as provided in a special assessment ordinance of general applicability adopted by the local unit of government pursuant to state law or local charter.

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

**460.945 Bonds or notes; issuance.**

Sec. 15. (1) A local unit of government may issue bonds or notes to finance energy projects under a property assessed clean energy program.

(2) Bonds or notes issued under subsection (1) shall not be general obligations of the local unit of government, but shall be secured by 1 or more of the following as provided by the governing body in the resolution or ordinance approving the bonds or notes:

(a) Payments of assessments on benefited property within the district or districts specified.

(b) Reserves established by the local unit of government from grants, bond or note proceeds, or other lawfully available funds.

(c) Municipal bond insurance, lines or letters of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, and any other available means of providing credit support or liquidity, including, but not limited to, arrangements described in section 315 of the revised municipal finance act, 2001 PA 34, MCL 141.2315.

(d) Tax increment revenues that may be lawfully available for such purposes.

(e) Any other amounts lawfully available for such purposes.

(3) A pledge of assessments, funds, or contractual rights made by a governing body in connection with the issuance of bonds or notes by a local unit of government under this act constitutes a statutory lien on the assessments, funds, or contractual rights so pledged in favor of the person or persons to whom the pledge is given, without further action by the governing body. The statutory lien is valid and binding against all other persons, with or without notice.

(4) Bonds or notes of 1 series issued under this act may be secured on a parity with bonds or notes of another series issued by the local unit of government pursuant to the terms of a master indenture or master resolution entered into or adopted by the governing body of the local unit of government.

(5) Bonds or notes issued under this act are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) Bonds or notes issued under this act, and interest payable on such bonds and notes, are exempt from all taxation by this state and its political subdivisions.

(7) Bonds or notes issued under this act further essential public and governmental purposes, including, but not limited to, reduced energy costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

#### **460.947 Self-directed energy optimization plan.**

Sec. 17. A commercial or industrial electric customer that installs or modifies an electric energy efficiency improvement under a property assessed clean energy program is exempt from the energy optimization charges the customer would otherwise incur under section 89 or 91 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1089 and 460.1091, if the customer conducts a self-directed energy optimization plan under and subject to the applicable requirements of section 93 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1093. These requirements include, but are not limited to, the requirement that the plan provide for aggregate energy savings that each year meet or exceed the energy optimization standards based on the electricity purchases in the previous year for the site or sites covered by the self-directed plan.

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

#### **460.949 Property assessed clean energy program; joint implementation.**

Sec. 19. (1) A local unit of government may join with any other local unit of government, or with any person, or with any number or combination thereof, by contract or otherwise as may be permitted by law, for the implementation of a property assessed clean energy program, in whole or in part.

(2) If a property assessed clean energy program is implemented jointly by 2 or more local units of government pursuant to subsection (1), a single public hearing held jointly by the cooperating local units of government is sufficient to satisfy the requirements of section 7(1)(b).

**History:** 2010, Act 270, Imd. Eff. Dec. 14, 2010.

*Rendered Wednesday, June 5, 2019 Page 5 Michigan Compiled Laws Complete Through PA 16 of 2019 © Legislative Council, State of Michigan Courtesy of [www.legislature.mi.gov](http://www.legislature.mi.gov)*

## APPENDIX B: LAGM APPLICATION FORM

### PACE Program Application Property and Property Owner Information

1. **Property/Parcel Legal Name(s)** (as they appear on property tax records)

Parcel #: \_\_\_\_\_  
Address: \_\_\_\_\_  
Owner: \_\_\_\_\_

2. **Property Type** (double-click to check all that apply)

- Agricultural  
 Commercial (including multifamily with 4 or more units)  
    • Type of commercial property - \_\_\_\_\_  
 Industrial  
 Nonprofit

3. **Property Record Owner(s) Contact Information**

Property Owner/Company Name: \_\_\_\_\_  
Signatory Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

4. **Property Owner(s) Type**

- Individual                       LLP                               LLC  
 Corporation                       501(c)3                       Other \_\_\_\_\_

5. **Property Valuation**

State Equalized Value (SEV): \$ \_\_\_\_\_  
Date of SEV: \_\_\_\_\_  
Valuation (per Appraisal): \$ \_\_\_\_\_  
Date of Appraisal: \_\_\_\_\_

6. **Existing Liens Against Property** (tax, special assessment, water or sewer charges, etc.)

Amount	Type	End Date
\$ _____	_____	_____
\$ _____	_____	_____

Total Dollar Amount of Liens Against Property: \$ \_\_\_\_\_

7. **Balance of Any Mortgage(s):**

	Amount of Mortgage	Name of Mortgage Holder
Mortgage	\$ _____	_____
Additional Debt on Property	\$ _____	_____

- a. **Consent:** If subject to a mortgage - Consent by mortgage holder(s) must be obtained.



## Energy Project Information

**1. PACE project Developer** (Lean & Green Michigan can make referrals if necessary.)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Other Contractors: \_\_\_\_\_

**2. Overall Energy Project Cost:** \_\_\_\_\_

**3. Savings to Investment Ratio\*** (as provided in Savings Guarantee)

**3a. Year 1:** \_\_\_\_\_

**3b. Overall:** \_\_\_\_\_

**4. Useful Life of Energy Project Measures:** \_\_\_\_\_ years

**5. User ID for Energy Star Portfolio Manager** (for property): \_\_\_\_\_

## PACE Loan Details

**1. PACE Lender/Capital Provider** (Lean & Green Michigan can make referrals if necessary.)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

**2. Requested Assessment Amount**

Energy Project Cost: \$ \_\_\_\_\_  
Energy Audit: \$ \_\_\_\_\_  
Engineering/Architect Plans: \$ \_\_\_\_\_  
Building Permit Fees: \$ \_\_\_\_\_  
Other (Please explain): \$ \_\_\_\_\_

**Total Assessment Amount:** \$ \_\_\_\_\_ (Total of all lines above)

**3. Requested Assessment Repayment Period:** \_\_\_\_\_ years

**4. Interest Rate Offered by Lender:** \_\_\_\_\_%

**All Attachments to Application:**

- Appraisal
- Baseline energy audit on the property, including useful life calculations of individual measures.
- Cash flow analysis\*
- Savings guarantee\*
- Lender Consent from mortgage holder
- Mortgage statement
- Property tax record
- Title report

## APPENDIX C: LAGM PACE EXPRESS APPLICATION FORM

### PACE Express Program Application Property and Property Owner Information

1. **Property/Parcel Legal Name(s)** (as they appear on property tax records)

Parcel #: \_\_\_\_\_  
Address: \_\_\_\_\_  
Owner: \_\_\_\_\_

2. **Property Type** (double-click to check all that apply)

**Agricultural**  
 **Commercial** (including multifamily with 4 or more units)  
    • Type of commercial property - \_\_\_\_\_  
 **Industrial**  
 **Nonprofit**

3. **Property Record Owner(s) Contact Information**

Property Owner/Company Name: \_\_\_\_\_  
Signatory Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

4. **Property Owner(s) Type**

Individual                       LLP                                       LLC  
 Corporation                       501(c)3                                       Other \_\_\_\_\_

8. **Property Valuation**

State Equalized Value (SEV): \$ \_\_\_\_\_  
Date of SEV: \_\_\_\_\_  
Valuation (per Appraisal): \$ \_\_\_\_\_  
Date of Appraisal: \_\_\_\_\_

9. **Existing Liens Against Property** (tax, special assessment, water or sewer charges, etc.)

Amount	Type	End Date
\$ _____	_____	_____
\$ _____	_____	_____

Total Dollar Amount of Liens Against Property: \$ \_\_\_\_\_

10. **Balance of Any Mortgage(s):**

	Amount of Mortgage	Name of Mortgage Holder
Mortgage	\$ _____	_____
Additional Debt on Property	\$ _____	_____

- a. **Consent:** If subject to a mortgage - Consent by mortgage holder(s) must be obtained.

## Energy Project Information

**1. PACE project Developer** (Lean & Green Michigan can make referrals if necessary.)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Other Contractors: \_\_\_\_\_

**2. Overall Energy Project Cost:** \_\_\_\_\_

**3. Useful Life of Energy Project Measures:** \_\_\_\_\_ years

**4. User ID for Energy Star Portfolio Manager** (for property): \_\_\_\_\_

## PACE Loan Details

**5. PACE Lender/Capital Provider** (Lean & Green Michigan can make referrals if necessary.)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

**6. Requested Assessment Amount**

Energy Project Cost: \$ \_\_\_\_\_  
Energy Audit \$ \_\_\_\_\_  
Engineering/Architect Plans \$ \_\_\_\_\_  
Building Permit Fees \$ \_\_\_\_\_  
Other (Please explain) \$ \_\_\_\_\_

**Total Assessment Amount:** \$ \_\_\_\_\_ (Total of all lines above)

**7. Requested Assessment Repayment Period:** \_\_\_\_\_ years

**8. Interest Rate Offered by Lender:** \_\_\_\_\_%

**All Attachments to Application:**

- Appraisal
- Baseline energy audit on the property, including useful life calculations of individual measures.
- Lender Consent from mortgage holder
- Mortgage statement
- Property tax record
- Title report

## **APPENDIX D: PACE SPECIAL ASSESSMENT AGREEMENT**

Each member jurisdiction may have slightly different language in their PACE special assessment agreement, please contact LAGM to review specific member jurisdiction requirements. Below is the general LAGM recommended model PACE special assessment agreement:

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SPACE ABOVE FOR RECORDING PURPOSES

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### **PACE SPECIAL ASSESSMENT AGREEMENT (OWNER-ARRANGED FINANCING)**

*by and among*

**[JURISDICTION], MICHIGAN  
and  
PROPERTY OWNER  
and  
PACE LENDER**

**Dated:** \_\_\_\_\_

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**PACE SPECIAL ASSESSMENT AGREEMENT**  
**(OWNER-ARRANGED FINANCING)**

**THIS PACE SPECIAL ASSESSMENT AGREEMENT** (this “Agreement”) is made this [INSERT DATE] between JURISDICTION, a Michigan county corporation (the “County”), whose address is 12220 Fillmore Street, West Olive, MI 49460, PROPERTY OWNER, a Michigan limited liability company (the “Property Owner”), whose address is INSERT ADDRESS, and PACE LENDER, a Michigan limited liability company (the “Lender”), whose address is INSERT ADDRESS.

**RECITALS:**

A. Pursuant to Act 270 and a resolution adopted by the Jurisdiction Board of Commissioners on [INSERT DATE], Ottawa has established the PACE Program as described in the PACE Program Report and has created the Special Assessment District under the PACE Program for the purpose, *inter alia*, of assisting a record owner of property within the Special Assessment District in obtaining Owner-Arranged Financing from a commercial lender to defray the costs of one or more Energy Projects on the property.

B. Under Act 270, Jurisdiction is authorized, pursuant to an agreement with the record owner of property within the Special Assessment District, to impose a special assessment on the property to be benefitted by the Energy Projects in order to secure and provide for the repayment of the Owner-Arranged Financing.

C. The Property Owner desires to undertake certain Energy Projects on commercial property of the Property Owner located within the Special Assessment District, as described herein, and has obtained a commitment from the Lender to make the Loan to the Property Owner to defray its cost.

D. In order to induce the Lender to make the Loan to the Property Owner, the Property Owner has requested that Jurisdiction enter into this Agreement to impose a special assessment on the property to be benefitted by the Energy Projects, in accordance with Act 270, which special assessment will secure and provide for repayment of the Loan from the Lender.

E. Pursuant to Act 270 and the PACE Program, Jurisdiction is authorized to enter into this Agreement.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the County, the Property Owner and the Lender agree that:

## ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** Capitalized terms used in this Agreement and Recitals shall have the meanings stated in Act 270 and as stated immediately below, except to the extent the context in which they are used requires otherwise:

(a) “Act 270” means Act 270 of the Michigan Public Acts of 2010, commonly referred to as the Property Assessed Clean Energy Act, MCL 460.931 et seq.

(b) “Agreement” means this PACE Special Assessment Agreement as same may be amended and/or restated.

(c) “Applicable Interest Rate” means the per annum rate of interest specified in the Loan Documents at which the Special Assessment Roll bears interest as calculated by the Lender in accordance with the provisions of Section 4.01 of this Agreement.

(d) “Authorized Official” means the [NAME], or his/her designee, who is authorized to exercise the authority of an Authorized Official under the terms of the PACE Program Report.

(e) “Default Rate” means the rates dictated for counties by the Michigan General Property Tax Act of 1893 as amended (MCL 211.78a and 211.78g).

(f) “Energy Efficiency Improvement” means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following: insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems; storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption; automated energy control systems; heating, ventilating, or air-conditioning and distribution system modifications or replacements; caulking, weather-stripping, and air sealing; replacement or modification of lighting fixtures to reduce the energy use of the lighting system; energy recovery systems; day lighting systems; installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity; measures to reduce the usage of water or increase the efficiency of water usage; and any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the Jurisdiction Board of Commissioners.

(g) “Energy Project” means the installation or modification of an Energy Efficiency Improvement or the acquisition, installation, or improvement of a Renewable Energy Improvement.

- (h) “Event of Default” has the meaning set forth in Section 7.01 hereof.
- (i) “Force Majeure” means unforeseeable events beyond a party’s reasonable control and without such party’s failure or negligence including, but not limited to, acts of God, acts of public or national enemy, acts of the federal government, fire, flood, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby.
- (j) “General Property Tax Act” means the General Property Tax Act, Act 206, Public Acts of Michigan, 1893, as amended.
- (k) “Improvements” means the Energy Efficiency Improvements and the Renewable Energy Improvements being undertaken by the Property Owner on the Special Assessment Parcel as described in Appendix E attached hereto.
- (l) “LAGM” shall mean Lean & Green Michigan, LLC, a Michigan limited liability company.
- (m) “Lean & Green Michigan™” means a statewide property assessed clean energy program open to all local units of government operated as a public-private partnership by LAGM in order to facilitate property assessed clean energy program-financed transactions.
- (n) “Lender” has the meaning set forth in the preamble.
- (o) “Loan” means the loan obtained by the Property Owner from the Lender pursuant to Owner-Arranged Financing to defray a portion of the cost of the Improvements under the terms of the Loan Documents.
- (p) “Loan Documents” means the Loan Agreement, dated as of [INSERT DATE], between the Property Owner and the Lender and any and all exhibits or attachments thereto, including any documents amending, restating, replacing, extending or otherwise modifying the Loan Agreement and all documents provided to the Lender from time to time by the Property Owner to evidence or secure the Loan as required pursuant to the terms of the Loan Agreement.
- (q) “Owner-Arranged Financing” means the process by which a property owner secures financing for improvements to its property that does not involve bonds or any other form of funding provided by the County.



- (r) “PACE Program” shall mean the property assessed clean energy program implemented by the County pursuant to Act 270 and the PACE Program Report to stimulate energy efficiency and renewable energy projects in conformity with Act 270.
- (s) “PACE Program Report” means the Lean & Green Michigan™ PACE Program Report approved by the Jurisdiction Board of Commissioners on [INSERT DATE], including any amendments or changes thereto made before the date of this Agreement.
- (t) “Payment Schedule” has the meaning set forth in Section 4.01 hereof.
- (u) “Property Owner” has the meaning set forth in the preamble.
- (v) “Renewable Energy Improvement” means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that use one (1) or more renewable energy resources to generate electricity, gas, or other power. Renewable Energy Improvement includes a biomass stove but does not include an incinerator or digester.
- (w) “Special Assessment” means the money obligation created pursuant to this Agreement with respect to the Special Assessment Parcel used to defray the cost of the Improvements and which shall, together with all interest, charges and penalties which may accrue thereon, be a lien upon the Special Assessment Parcel of the same priority and status as other property tax liens and other assessment liens as provided in Act 270 until such amounts have been paid in full.
- (x) “Special Assessment District” means the Special Assessment District established as part of the PACE Program pursuant to Act 270.
- (y) “Special Assessment Parcel” means the property located in the Special Assessment District to which one hundred percent (100%) of the Special Assessment has been spread by the County and which is more particularly described on the attached Appendix B.
- (z) “Special Assessment Roll” has the meaning set forth in Section 4.01 hereof.

## **ARTICLE II DESCRIPTION OF IMPROVEMENTS**

**Section 2.01 Description of Improvements.** The Improvements to be acquired, constructed, installed and financed by the Property Owner under the PACE Program are described in Appendix E attached hereto. If after project approval, the Property Owner seeks to undertake additional Improvements, Appendix E may be amended or supplemented from time to time. Such additional Improvements must meet all the eligibility criteria of the PACE Program and the PACE Program Report and may be added to the original application as a modification, or submitted as a new project, at the discretion of LAGM and the Authorized Official.

**ARTICLE III**  
**COVENANTS OF THE PROPERTY OWNER**

**Section 3.01 Acquisition, Construction and Installation of Improvements.**

(a) The Property Owner covenants and agrees to acquire, construct and install the Improvements as described in Appendix E on the Special Assessment Parcel described on Appendix B in full conformity with all applicable laws and regulations and in compliance with the PACE Program eligibility requirements set forth in Appendix A. If the proceeds of the Loan are not sufficient to pay the costs of the Improvements as aforesaid, the Property Owner agrees to complete the Improvements and to pay that portion of the costs of the Improvements in excess of the amount of the Loan. The Property Owner acknowledges and agrees that the County makes no representation, either express or implied, that the proceeds of the Loan will be sufficient to pay the total costs of the Improvements, and the Property Owner agrees that if, after exhaustion of the proceeds of the Loan, the Property Owner shall be required to pay any portion of the costs of the Improvements from its own funds, the Property Owner shall not be entitled to any reimbursement therefor from County or from the Lender, nor shall the Property Owner be entitled to any abatement or diminution of the amount of the Special Assessment created by this Agreement or of any interest, charges or penalties which may accrue thereon.

(b) To provide for monitoring and verification of the Energy Project, the Property Owner has created an Energy Star Portfolio Manager account and has linked this account to the LAGM Energy Star Portfolio Manager account. The Property Owner has entered all electricity bills for the Special Assessment Parcel for the year (12 consecutive months) immediately preceding the installation of the Energy Project. The Property Owner further agrees to enter its electricity bills for the duration of the Agreement on an annual basis. Annual electricity bills for the Special Assessment Parcel will be entered into the Property Owner's Energy Star Portfolio Manager account by January 31 of each year after the year for which the electricity bills are to be entered.

**ARTICLE IV**  
**PACE SPECIAL ASSESSMENT**

**Section 4.01 PACE Special Assessment Created.**

(a) At the request of the Property Owner, the County hereby determines to assist the Property Owner in obtaining the Loan to defray a portion of the cost of the Improvements on the Special Assessment Parcel by the levy of the Special Assessment upon the Special Assessment Parcel, which the Authorized Official on behalf of the County finds is especially benefited in proportion to the cost of the Improvements. The Special Assessment created hereby has been spread by the Authorized Official on behalf of the County on the Special Assessment Roll attached hereto as **Appendix C** (the "Special Assessment Roll"), with the consent of the Property Owner, to allocate one hundred percent (100%) of the Special Assessment to the Special Assessment Parcel.

(b) The Special Assessment, as allocated by the Authorized Official with the consent of the Property Owner, is hereby finally established and levied against the Special Assessment Parcel as described on the attached **Appendix B** in the principal amount of [INSERT LOAN

AMOUNT] as stated on the Special Assessment Roll. The Special Assessment is effective immediately upon the execution and delivery of this Agreement by the Property Owner. The Special Assessment shall be paid by the Property Owner in [NUMBER] semi-annual installments on the dates and in the amounts set forth in the payment schedule attached hereto as **Appendix D** (the "Payment Schedule"). The Special Assessment Roll and the Payment Schedule are hereby confirmed by the Authorized Official on behalf of the County. The unpaid amount of the Special Assessment Roll shall bear interest from the date of execution and delivery of this Agreement at the Applicable Interest Rate, as calculated by the Lender in accordance with the terms of the Loan Documents, payable by the Property Owner semi-annually on each date on which any installment of the Special Assessment is due in accordance with the Payment Schedule. Notwithstanding the foregoing, (i) if any installment of the Special Assessment or any interest due and payable on the Special Assessment Roll is not paid by the Property Owner when and as the same shall become due and payable in accordance with the provisions of this Section 4.01 or (ii) any "event of default" under the Loan Documents has occurred and is continuing, the unpaid amount of the Special Assessment Roll shall bear interest at the Default Rate as calculated by the Lender in accordance with the terms of the Loan Documents, for as long as such amounts remain unpaid or for so long as such "event of default" under the Loan Documents exists and is continuing. The Count, the Property Owner and the Lender agree that the Lender shall be solely responsible for the determination from time to time of the Applicable Interest Rate and the Default Rate and the amount of interest due and payable by the Property Owner on the Special Assessment Roll on each day on which interest thereon is due and payable as provided in this Agreement, and the Lender's determination thereof shall be binding on the Property Owner absent manifest error. The Property Owner and the Lender agree that the Count shall under no circumstance have any obligation to determine the Applicable Interest Rate or the Default Rate or to calculate the amount of any interest payment due on the Special Assessment Roll as provided in this Agreement, and the Count may conclusively rely upon the Lender's determinations thereof for the purpose of exercising and discharging all of the County's rights and obligations under this Agreement. The Lender agrees to provide, or cause to be provided, notice to the Property Owner and the Count of the determinations of the Applicable Interest Rate and the Default Rate, as applicable, pursuant to this Section 4.01(b) at such times, and from time to time, as the Property Owner or the County may request.

**Section 4.02 Assignment of Special Assessment Payments to Lender.** At the request of the Property Owner and the Lender, and pursuant to Section 9(g)(iii) of Act 270, the County hereby irrevocably assigns to the Lender its right to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, whether in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01(b) of this Agreement. In pursuance of the foregoing, the County, the Property Owner and the Lender agree that, except as provided in Section 4.05 of this Agreement, (i) all installments of the Special Assessment, whether payable in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable upon the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, shall be paid by the Property Owner directly to the Lender

when due at such address in the United States as may be designated by the Lender in writing to the Property Owner and the County; (ii) the County shall have no obligation or duty to include any installments of the Special Assessment on any tax bill issued by the County or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll; and (iii) absent receipt by the County of written notice from the Lender of a payment default in accordance with Section 4.05 hereof, the County shall be entitled to conclusively presume that all installments of the Special Assessment and all payments of interest due and payable on the Special Assessment Roll have been made by the Property Owner to the Lender when due as required by the terms of this Agreement.

**Section 4.03 Property Owner's Consent to Special Assessment; Waiver.**

(a) The Property Owner hereby irrevocably consents to and confirms the creation of the Special Assessment Roll and the levy of the Special Assessment established pursuant to this Agreement and EXPRESSLY WAIVES ANY AND ALL CLAIMS CHALLENGING AND DEFENSES TO, THE LEGALITY, VALIDITY, ENFORCEABILITY OR COLLECTABILITY OF THE SPECIAL ASSESSMENT, including, but not limited to, claims arising from, relating to or otherwise based upon any theory of procedural defect concerning the approval of the Improvements, the establishment of the Special Assessment District, confirmation of the Special Assessment Roll and the Payment Schedule, the County's right to place the Special Assessment lien on the Special Assessment Parcel, the collectability and due dates of the Special Assessment installments and interest due and payable on the Special Assessment Roll, or any other theory or claim. The Property Owner further waives notice of hearing and the right to file objections if and to the extent such rights exist under any special assessment ordinance of the County.

(b) Following the signing of this Agreement, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of the Special Assessment, and the Property Owner, for itself and its successors in interest, lessees, purchasers, and assigns with respect to all or any part of the Special Assessment Parcel, hereby irrevocably waives its rights to contest the Special Assessment with any adjudicative body having jurisdiction over the subject matter, including, but not limited to, the Michigan Tax Tribunal.

(c) In addition to any conditions, covenants, warranties and representations specified in the Loan Documents, the Property Owner shall not sell, transfer, alienate or convey any of its interest in the Special Assessment Parcel without first having given written notice of the Special Assessment to any successors in interest, lessees, purchasers or assigns and having made a copy of this Agreement part of any purchase contract, sale contract, lease agreement, deed or any other conveyancing instrument by which the Property Owner purports to assign all or any part of its interest in the Special Assessment Parcel to any successors in interest, lessees, purchasers, transferees, licensees and assigns. This Agreement shall be recorded against the real property constituting the Special Assessment Parcel by the PACE lender with the Register of Deeds of Jurisdiction, State of Michigan.

(d) The Property Owner agrees that it, its successors and assigns shall, during the term of this Agreement and the Special Assessment, pay all ad valorem real property taxes and assessments levied against the Special Assessment Parcel when due and the Property Owner specifically

waives, irrevocably for itself, its successors and assigns as to any and all portions of the Special Assessment Parcel, the right to pay ad valorem real property taxes and assessments on any other installment method which may be available to property owners in the County.

(e) The County agrees that following (i) payment by the Property Owner in full of the Special Assessment, together with all accrued interest on the Special Assessment Roll, and all other interest, charges and penalties which may accrue thereon, and (ii) receipt by the County of written acknowledgment from the Lender that the Special Assessment, together with all accrued interest on the Special Assessment Roll, has been paid to the Lender in full, it will promptly execute and deliver documentation discharging the lien of the Special Assessment on the Special Assessment Parcel. Until the Special Assessment liability has been fully satisfied and the lien discharged, each purchaser of all or any part of the Special Assessment Parcel, as a condition of closing on such purchase, shall execute and deliver to the County a written notice: (i) acknowledging the principal amount unpaid and outstanding on the Special Assessment; (ii) agreeing to the assumption of the liability to pay the Special Assessment, and any interest thereon, on a timely basis, when due, until the remaining balance and interest on said Special Assessment has been paid in full; (iii) acknowledging that the title insurance policy will state that the Special Assessment has not been paid at time of closing thereon; and (iv) agreeing to pay to the Lender at or prior to the close of the purchase all past due installments of the Special Assessment and all past due payments of interest on the Special Assessment Roll. The representations set forth in such written notice shall be enforceable at law and in equity, including without limitation, by way of specific performance.

**Section 4.04 Lien.** The Special Assessment is an obligation with respect to the Special Assessment Parcel, and shall, until paid, be a lien upon the Special Assessment Parcel for the amount of the Special Assessment and all interest, charges and penalties that may accrue thereon. Such lien shall be of the same character and effect as liens created pursuant to the ordinances of the County for County taxes and shall be treated as such with respect to procedures for collection as set forth in the General Property Tax Act and the ordinances of the County, including accrued interest, charges and penalties. The Special Assessment confirmed hereby is a debt to the County from the Property Owner and its successors in interest, lessees, purchasers and assigns. The right of the County to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01, has been irrevocably assigned by the County to the Lender in accordance with the provisions of Section 4.02 of this Agreement. No judgment or decree shall destroy or impair any lien of the County upon the premises assessed for such amount of the Special Assessment as may have been equitably or lawfully charged and assessed thereon. Failure of the Property Owner or any subsequent property owner to receive any notice required to be sent under the provisions of the ordinances of the County or this Agreement shall not

invalidate the Special Assessment or the Special Assessment Roll and shall not be a jurisdictional requirement.

**Section 4.05 Payment Default.**

(a) If any installment of the Special Assessment or interest due on the Special Assessment Roll shall not have been paid by the Property Owner to the Lender, as assignee of the County, at the time and in the amount required by Section 4.01 hereof (a "Payment Default"), the Lender shall, within thirty (30) days following the date such sums were due and payable (the "Payment Default Date"), deliver written notice to the County stating all of the following: (i) that a Payment Default has occurred under this Agreement; (ii) the Payment Default Date; (iii) the amount of the Special Assessment that was due and payable as of the Payment Default Date and which remains unpaid and the amount of interest on the Special Assessment Roll that was due and payable as of the Payment Default Date and which remains unpaid (collectively, the "Payment Default Amount"); and (iv) an attestation by an authorized officer of the Lender that the statements contained in the foregoing notice are true, correct and complete as of the date of such notice. Upon receipt of such notice from the Lender, the County shall take such actions as may be required to cause the Payment Default Amount to be certified for collection on the summer or winter tax bill next succeeding the Payment Default Date, and such Payment Default Amount shall be collected at the same time and in the same manner as is prescribed for the collection of the County taxes under the General Property Tax Act and the ordinances of the County. The County may assess a fee for delinquent taxes, interest, penalties, and fees as provided under General Property Tax Act Section 211.78. Notwithstanding the foregoing provisions of this Section 4.05(a), if the County shall determine that the notice of the Lender described in this Section 4.05(a) was not received by the County in sufficient time to permit the Payment Default Amount to be placed for collection on the summer or winter tax bill next succeeding the Payment Default Date, such Payment Default Amount shall be certified for collection on the next summer or winter tax bill issued thereafter. The County shall be entitled to conclusively rely upon any notice of the Lender delivered pursuant to this Section 4.05(a) as to the existence of a Payment Default and as to the Payment Default Amount, and shall not be liable to the Property Owner or to any other person for any action taken by the County pursuant to the terms of this Agreement or otherwise in reliance upon the information contained in such notice. Absent receipt by the County of written notice from the Lender of a Payment Default in accordance with this Section 4.05(a), the County shall be entitled to presume conclusively that all installments of the Special Assessment and all payments of interest due and payable on the Special Assessment Roll have been made by the Property Owner to the Lender when due as required by the terms of this Agreement, and the County shall have no obligation or duty to include any installments of the Special Assessment on any tax bill issued by the County or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll.

(b) The County hereby agrees that, pursuant to the assignment set forth in Section 4.04, it will cause to be paid over to the Lender all amounts received by the County from the Jurisdiction Treasurer as collections of any Payment Default Amount within forty-five (45) days of the date such sums are received by the County from the Jurisdiction Treasurer. The parties hereto expressly acknowledge and agree that in no event shall the County advance to the Lender the amount of any unpaid Payment Default Amount, and the County shall be obligated to pay

over to the Lender only such sums as are actually received by the Jurisdiction Treasurer as collections of any Payment Default Amount.

(c) In the event that any interest, penalties, fees or other charges shall be imposed upon the Special Assessment Parcel or against the Special Assessment Roll or the amount of any unpaid Special Assessment pursuant to the ordinances of the County or the General Property Tax Act, by Jurisdiction, Michigan, for the administration, billing, collection or enforcement of the Special Assessment created hereby, such amounts shall remain a debt of the Property Owner to Jurisdiction, Michigan, as their interests may appear, and shall not be deemed to have been assigned to the Lender pursuant to the terms of this Agreement or otherwise.

**Section 4.06 Prepayment of Special Assessment.** Subject to the provisions of the Loan Documents, including, without limitation, prepayment penalties, if any, the Property Owner may, upon sixty (60) days' written notice to the Lender and the County, prepay any installment of the Special Assessment specified in the Payment Schedule by causing to be paid to the Lender the amount of the installment to be prepaid, together with accrued interest thereon to the date of prepayment. If such prepayment of any installment is not received by the Lender on the date specified for prepayment, the Lender shall promptly deliver written notice to the County that such prepayment was not received by the Lender.

**Section 4.07 Invalidity; Cure.** In the event of any invalidity of the Special Assessment, the Authorized Official, at the request of the Lender, and if the County shall have received indemnity satisfactory to the Authorized Official for its costs and expenses (including reasonable attorneys' fees), shall cause a new Special Assessment to be made for all or any part of the Improvements in accordance with Act 270 and the PACE Program as reasonably determined by the Authorized Official. The Property Owner, on behalf of itself and its successors in interest, lessees, purchasers, and assigns, hereby waives any objections to and agrees to the imposition of such new Special Assessment; provided, however, that the amount of the new Special Assessment shall not exceed the unpaid principal amount of the Loan at the time the new Special Assessment shall be established.

**Section 4.08 Jurisdiction or Jurisdiction Treasurer Becoming Owner of the Special Assessment Parcel.** In the event that the County Treasurer takes ownership of the Special Assessment Parcel by operation of law, the County Treasurer and the Lender agree that while the lien on the Special Assessment Parcel will remain in full force and effect, and all principal, interest, penalties, fees, and other charges, either based on Michigan Compiled Laws or the Loan Documents will continue to accrue during the period of time that the County Treasurer owns the Special Assessment Parcel. No loan or special assessment payments, including interest, penalties, fees or other charges, are required to be paid or will be accrued by the County Treasurer to the Lender. Any and all principal, interest, penalties, fees, and other charges which accrue during the period by which the County Treasurer own the Special Assessment Parcel will, in the sole and unlimited discretion of the Lender, either be: (1) considered immediately due and payable by any person or entity who purchases the Special Assessment Parcel from the County Treasurer, and no sale or transfer of the Special Assessment Parcel is valid unless and until all principal, interest, penalties, fees, and other charges have been paid by the subsequent owner of the Special Assessment Parcel; or (2) capitalized into the outstanding principal balance of the Special Assessment, causing the Lender to provide a revised Payment Schedule in an amount

necessary to amortize the new outstanding principal balance of the Special Assessment over the remaining number of payments. The lien created by the Special Assessment shall not be extinguished or released until all necessary principal and interest payments, as well as all penalties, fees, and other charges, as determined solely by Lender, have been paid and received by Lender.

**ARTICLE V**  
**CONDITIONS PRECEDENT**

**Section 5.01 Conditions Precedent to the County's Obligations.**

The obligations of the Count under this Agreement shall be subject to the satisfaction of the following conditions precedent on or prior to the date of execution and delivery of this Agreement by the County, unless waived in writing by the County:

(a) The County, the Property Owner and the Lender shall have authorized, executed and delivered this Agreement and all approvals required hereby shall have been secured.

(b) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Property Owner or the County is a party, or shall be threatened in writing against the Property Owner or the County, contesting the validity or binding effect of this Agreement, the Special Assessment or the Owner-Arranged Financing contemplated hereby, or which, if adversely decided, could have a material adverse effect upon the ability of the Property Owner to pay or the County to levy the Special Assessment or to assign to the Lender the right to receive payments of the Special Assessment, or which could have a material adverse effect on the ability of the Property Owner or the County to comply with any of the obligations and terms of this Agreement.

(c) There shall be no ongoing breach of any of the covenants and agreements of the Property Owner required to have been observed or performed by the Property Owner under the terms of this Agreement and no Event of Default by the Property Owner, and no event which, with the passage of time or the giving of notice or both could become an Event of Default by the Property Owner under this Agreement, shall have occurred.

(d) All documents, schedules, materials, maps, plans, descriptions and related matters which are contemplated to be made Appendices to this Agreement shall have been fully completed by the Property Owner to the County's reasonable satisfaction and such Appendices shall be true, accurate and complete.

(e) The Property Owner shall meet all eligibility requirements as set forth in Appendix A.

(f) The Property Owner and the Lender shall have authorized, executed and delivered the Loan Documents, and the Lender shall have funded the Loan in accordance with the terms of the Loan Documents.



(g) The Property Owner shall not have filed for bankruptcy or sought the protections of any state or federal insolvency law providing protections to debtors.

(h) The Property Owner shall have obtained consent from each holder of a mortgage interest or lien upon the Special Assessment Parcel prior to the execution and delivery of this Agreement in substantially the form set forth in the PACE Program Report.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES**

### **Section 6.01 Representations and Warranties of the County.**

The County represents and warrants to the Property Owner that, as of the date of this Agreement:

(a) The execution and delivery of this Agreement has been duly authorized by the County, and this Agreement complies with Act 270 and constitutes a valid and binding agreement of the County, enforceable against the County in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principals of equity, including those relating to equitable subordination.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated herein is in violation of any provision of any existing law, ordinance, rule, resolution or regulation to which the County is subject, or any agreement to which the County is a party or by which the County is bound, or any order or decree of any court or governmental entity by which the County is subject.

(c) There are no delinquent taxes, special assessments, or water or sewer charges on the Special Assessment Parcel that will be assessed under this Agreement; and there are no delinquent assessments on the Special Assessment Parcel under a PACE program.

### **Section 6.02 Representations and Warranties of the Property Owner.**

The Property Owner represents and warrants to the County and the Lender that:

(a) The Property Owner is duly organized and validly existing as a limited liability company in good standing under the laws of the State of Michigan, with power under the laws of the State of Michigan to carry on its business as now being conducted, and is duly qualified to do business in the State of Michigan; and the Property Owner has the power and authority to own the Special Assessment Parcel and to carry out its obligation to complete the Improvements.

(b) The execution and delivery of this Agreement will not result in a violation or default by the Property Owner of any provision of its Articles of Organization or Operating Agreement, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject.

(c) The Property Owner is the sole and exclusive legal and equitable title owner of fee simple title to the Special Assessment Parcel and the Improvements located, or to be located,

thereon and has full legal power and authority to consent to the finalization and levying of the Special Assessment as provided herein.

(d) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action, and this Agreement has been duly executed and delivered by the Property Owner and constitutes a valid and binding agreement enforceable against the Property Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

(e) Property Owner warrants and agrees that any contractual, legal or other disputes between it and the Lender--other than matters specifically related to enforcement of property tax obligations--or the contractor involved in the Improvements, do not involve the County, and Property Owner agrees to defend and hold the County and its agents, including but not limited to LAGM, harmless from any such disputes or causes of action as well as any other cost or liability incurred by the County as a result of the Property Owner's participation in the PACE Program in Jurisdiction, with the sole exception being disputes or liability caused solely by the County's intentional or negligent actions or inactions.

(f) The Property Owner, the Special Assessment Parcel and the Improvements satisfy all of the PACE Program eligibility and program requirements set forth in Appendix A.

**Section 6.03 Representations and Warranties of the Lender.**

The Lender represents and warrants to the County that:

(a) The Lender has experience in the market for property assessed clean energy programs and assessments and is capable of evaluating the merits and risks of its participation in the Owner-Arranged Financing contemplated by this Agreement.

(b) The Lender has made its own independent investigation of the Property Owner, the terms of this Agreement, the nature of the Special Assessment created hereby and the procedures for the collection and enforcement of the Special Assessment under this Agreement and the laws of the State of Michigan, and is not relying on the County, its agents, attorneys or employees for any of such information or with respect to the sufficiency and scope of such investigation. The Lender has not received, and is not relying on, any representations of the County with respect to the Property Owner.

(c) Lender warrants and agrees that any contractual, legal or other disputes between it and Property Owner--other than matters specifically related to enforcement of property tax obligations--do not involve the County, and Lender agrees to hold the County and its agents, including but not limited to LAGM, harmless from any such disputes or causes of action.

**ARTICLE VII  
DEFAULT**

**Section 7.01 Property Owner Event of Default.** If the Property Owner shall default in the performance of any covenant or agreement on its part contained in this Agreement and such

default shall continue for a period of ten (10) days after written notice thereof has been given to the Property Owner by the County, an “Event of Default” shall be deemed to have occurred under this Agreement.

**Section 7.02 Remedies for Property Owner Event of Default.** Upon the occurrence of an Event of Default as provided in Section 7.01 hereof, the County, after giving written notice as required, without further notice of any kind, and in addition to all other rights and remedies provided at law or in equity, shall be entitled to seek and obtain a decree of specific performance of this Agreement from a court of competent jurisdiction; or the right to recover from the Property Owner any damages incurred by the County and any costs incurred by the County in enforcing or attempting to enforce this Agreement or the Special Assessment, including attorneys’ fees and expenses; or to foreclose on the Special Assessment Parcel and to sell all or any part of the Special Assessment Parcel to the extent necessary to recover any damages and costs; or any combination of the foregoing. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the County shall not be obligated to institute any of the actions or proceedings or to exercise any of the remedies authorized by this Section 7.02 upon the occurrence of an Event of Default hereunder, and that its obligations with respect to the billing, collection and enforcement of the Special Assessment or any installment thereon shall be limited to those obligations set forth in Article IV of this Agreement. The Lender acknowledges that neither the Special Assessment nor any installment thereon can be accelerated.

**Section 7.03 The County Default.** If the County shall default in the performance of any covenant or agreement on its part contained in this Agreement and shall fail to proceed in good faith to cure such default within sixty (60) days after written notice thereof has been received by the County from the Property Owner or the Lender, a “County Default” shall be deemed to have occurred under this Agreement.

**Section 7.04 Remedy for County Default.** Upon the occurrence of a County Default as provided in Section 7.03 hereof, and if the Property Owner or the Lender, as the case may be, shall have otherwise fully performed all of its obligations hereunder, the Property Owner or the Lender, after giving written notice as required, without further notice or demand, shall be entitled to seek and obtain a decree of specific performance from a court of competent jurisdiction; but neither the Property Owner nor the Lender shall have the right to seek to recover money damages against the County, including any costs or fees (including attorneys’ fees) incurred by the Property Owner or the Lender in enforcing or attempting to enforce this Agreement. Neither the occurrence of a County Default nor the institution of any proceeding or the exercise of any remedy upon the occurrence of a County Default shall negate or diminish the obligations of the Property Owner hereunder to pay the installments of the Special Assessment and interest accrued on the Special Assessment Roll and all other costs hereunder when the same shall become due and payable.

**Section 7.05 Indemnification of Jurisdiction.**

(a) By Property Owner. Except to the extent claims arise from Jurisdiction's gross negligence or intentional misconduct, Property Owner agrees to indemnify, defend and save harmless Jurisdiction against, and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of

attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against Jurisdiction because of any of the following:

(1) Any negligent or tortious act, error, or omission held in a court of competent jurisdiction to the extent it is attributable, to the Property Owner, or any of its personnel, employees, consultants, agents, or any entities associated or affiliated with the Property Owner (directly or indirectly) or any subsidiary to the Property Owner now existing, or to be created, its agents and employees for whose acts any of them might be liable.

(2) Any failure by the Property Owner, or any of its employees to perform their obligations either implied or expressed under this Agreement.

Nothing in this article shall be deemed to relieve the Property Owner of its duties to defend Jurisdiction, as specified, pending a determination of the liabilities of the Property Owner, by legal proceeding or agreement. Jurisdiction shall cooperate with the Property Owner in the defense against the suit. In no event shall the Property Owner make any admission of guilt or liability on behalf of Jurisdiction without Jurisdiction's prior, written consent.

(b) By Lender. Except for claims arising from Jurisdiction's gross negligence, Lender agrees to indemnify, defend and save harmless Jurisdiction against, and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against Jurisdiction because of:

Any gross negligent or tortious act, error or omission held in a court of competent jurisdiction to be attributable in whole or in part to the Lender, or any of its personnel, employees, consultants, agents, or any entities associated or affiliated with the Lender (directly or indirectly) or any subsidiary to the Lender now existing, or to be created, their agents and employees for whose acts any of them might be liable.

Nothing in this article shall be deemed to relieve Lender of its duties to defend Jurisdiction, as specified, pending a determination of the liabilities of the Lender, by legal proceeding or agreement. The County shall cooperate with Lender in the defense against the suit. In no event shall Lender make any admission of guilt or liability on behalf of Jurisdiction without Jurisdiction's prior, written consent.

For purposes of these provisions, the term "County" includes the County of Ottawa and all other associated, affiliated, or subsidiary departments or divisions now existing or to be created, their agents, employees, and elected or appointed officials.

This indemnity must not be construed as a waiver of any governmental immunity Jurisdiction, its agencies, or employees, has as provided by statute or modified by court decisions.

Section 7.06 Waiver. Failure of any party hereunder to act upon discovery of a default or to act upon the existence of an Event of Default shall not constitute a waiver of the right to pursue the remedies provided herein.

## **ARTICLE VIII MISCELLANEOUS**

**Section 8.01 Term.** Except as otherwise provided in this Agreement, the terms of this Agreement shall commence on the date first written above and shall terminate at such time as the Special Assessment liability shall have been fully satisfied as provided in Section 4.03(e) hereof.

**Section 8.02 Assignment.**

(a) Except as otherwise provided herein and as provided in Section 8.02(b) hereof, no party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of the other parties hereto excepting as otherwise expressly provided herein.

(b) The Lender and its successors and assigns may assign its rights and obligations under this Agreement and its rights in the Special Assessment, in whole but not in part; provided, however, that any such assignment shall be made only in accordance with applicable law; and provided further, however, that no such assignment shall be effective unless the County shall have first received (i) notice of the assignment disclosing the name and the address of the assignee, which shall be an address in the United States and (ii) a Certificate of Assignment executed by the assignee in the form attached to this Agreement as Appendix G. From and after the date of satisfaction of the conditions for the assignment of this Agreement as provided in this Section 8.02(b), the assignee of the Lender shall be a party hereto and shall have the rights and obligations of the Lender specified hereunder, and such assignee shall be deemed to be the “Lender” for all purposes of this Agreement.

**Section 8.03 Notices.** All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows, or to such other address as such party may specify by written notice to the other parties hereto:

If to the County:

With a copy to: PACE Administrator  
Lean & Green Michigan  
500 Temple Street, Suite 6270  
Detroit, MI 48201

If to the Property Owner: PROPERTY OWNER  
ADDRESS

With a copy to: The Lender

With a copy to: PACE Administrator  
Lean & Green Michigan  
500 Temple Street, Suite 6270  
Detroit, MI 48201

If to the Lender: PACE LENDER  
ADDRESS

With a copy to:

ADDRESS

**Section 8.04 Amendment and Waiver** No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by each party hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

**Section 8.05 Entire Agreement**. This Agreement constitutes the entire agreement between the County, on the one hand, and the Lender and the Property Owner, on the other hand. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, between the County, on the one hand, and the Lender or the Property Owner, on the other hand.

**Section 8.06 Execution in Counterparts**. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

**Section 8.07 Captions**. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

**Section 8.08 Applicable Law**. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

**Section 8.09 Mutual Cooperation**. Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement. Each party to this Agreement shall exercise reasonable diligence in reviewing, approving, executing and delivering all documents necessary to accomplish the purposes and intent of this Agreement. Each party to this Agreement also shall use its best efforts to assist the other parties to this Agreement in the discharge of its obligations hereunder and to assure that all conditions precedent to the financing arrangements are satisfied.

**Section 8.10 Binding Effect; No Third-Party Beneficiary**. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns. In no event shall the provisions of this Agreement be deemed to inure to the benefit of or be enforceable by any third party, except for permitted assigns.

**Section 8.11 Force Majeure**. No party hereto shall be liable for the failure to perform its obligations hereunder if said failure to perform is due to Force Majeure. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; provided, however, that the party seeking to take advantage of this Section shall notify the other party in writing, setting forth the event giving rise to said failure to perform, within ten (10) business days after the occurrence of said event.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the County, PROPERTY OWNER, and PACE LENDER have caused this PACE Special Assessment Agreement to be duly executed and delivered as of the date first written above.

Witnessed:

**PROPERTY OWNER**

\_\_\_\_\_  
Signature of:

By:

\_\_\_\_\_

Its:

Witnessed:

**COUNTY**

\_\_\_\_\_  
Signature of:

By:

\_\_\_\_\_  
Its: AUTHORIZED OFFICIAL

\_\_\_\_\_  
Signature of:

By:

\_\_\_\_\_  
Its: AUTHORIZED OFFICIAL

Witnessed:

**PACE LENDER**

\_\_\_\_\_  
Signature of:

By: Its:



State of Michigan )  
 ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_ the Authorized Signatory of \_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission expires \_\_\_\_\_

State of Michigan )  
 ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, by [COUNTY AUTHORIZED OFFICIAL] on behalf of Jurisdiction.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission expires \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, by PACE LENDER OFFICIAL the Authorized Signatory of PACE LENDER, on behalf of PACE LENDER.

\_\_\_\_\_  
Notary Public  
COUNTY, STATE  
My Commission expires \_\_\_\_\_

**APPENDIX A**  
**PROGRAM ELIGIBILITY CHECKLIST**

Property is privately owned commercial or industrial real property within Jurisdiction's jurisdictional boundaries, which may be owned by any individual or private entity, whether for-profit or non-profit. MCL 460.933(g). Multi-family residential property is included in the definition of commercial property.

There are no delinquent ad valorem taxes, special assessments, or water or sewer charges on the property. The Authorized Official at his discretion may disqualify properties that although not currently delinquent, have been delinquent within six months of the application's submission. MCL 460.941(2)(a).

There are no delinquent assessments on the property under a PACE program. MCL 460.941(2)(b).

The term of assessment shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 30 years. Projects that consist of multiple energy efficiency improvements or renewable energy systems with varying lengths of useful life may blend the lengths to determine an overall assessment term that does not exceed the useful life of the improvements in aggregate. MCL 460.939(i).

An appropriate ratio must be determined for the amount of assessment in relation to the assessed value of the property. MCL 460.939(j).

Written consent from the mortgage holder must be obtained if the property is subject to a mortgage. MCL 460.939(k).

A baseline energy audit must be conducted for the property that is approved by LAGM. Such approval may be granted retroactively if the audit meets the standards of LAGM. MCL 460.939(o).

For projects financed for more than \$250,000, a performance guarantee must be provided by the contractor(s) to guarantee a savings to investment ratio greater than one (1). MCL 460.939(p). The performance guarantee must meet the standards set by LAGM.

For projects financed for more than \$250,000, financial and logistical arrangements for ongoing measurement and verification of energy savings that meet standards set by LAGM. MCL 460.939(p).

**APPENDIX B**

**SPECIAL ASSESSMENT PARCEL DESCRIPTION**

Parcel Number:

Address:

**LEGAL DESCR:**

**APPENDIX C**

**SPECIAL ASSESSMENT ROLL**

PACE Project Special Assessment

Parcel Number:

Address:

City:

Owner:

Assessment:

Percent:

I certify that the above is the special assessment role created for the PACE project referenced in this document in the applicable county, city, village, or applicable entity, in the State of Michigan, subject to payment of the special assessment as outlined in Appendix C of this document.

---

---

Dated

**APPENDIX D**

**PAYMENT SCHEDULE  
(TBD)**

**APPENDIX E**

**DESCRIPTION OF IMPROVEMENTS**

**APPENDIX F**

**PACE Program Application**

## APPENDIX G

### FORM OF CERTIFICATE OF ASSIGNMENT

This Certificate of Assignment of the Special Assessment Agreement (“**Assignment**”), dated effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), is made by INSERT LENDER (“**Assignor**”) to \_\_\_\_\_ (“**Assignee**”). Assignor and Assignee are referred to at times, each individually as a “**Party**,” and collectively as the “**Parties**.”

#### Agreement

1. For good and valuable consideration and the payment of [INSERT PAYMENT AMOUNT] ([INSERT NUMERICAL VALUE]), the receipt and sufficiency of which is hereby acknowledged, confessed, stipulated and agreed upon by Assignor, Assignor ASSIGNS, BARGAINS, GIVES, SETS OVER, CONVEYS, TRANSFERS and DELIVERS to Assignee all of Assignor’s rights, title, interest, obligations, and duties under the Special Assessment Agreement entered into by Assignor, \_\_\_\_\_, and \_\_\_\_\_ (the “**Transferred Interest**”), together with all of Assignor’s rights to receive payments from \_\_\_\_\_ attributable to the Transferred Interest arising on and after the date of this Assignment.

2. Assignor warrants that: (i) it is authorized to execute this document; (ii) it is conveying good, indefeasible title to the Transferred Interest; and (iii) the Transferred Interest is free and clear of all liens and encumbrances, and no party has any rights in or to acquire, or hold as security, or otherwise, the Transferred Interest.

3. Assignor hereby agrees to make, execute and deliver to Assignee any and all further instruments of conveyance, assignment or transfer, and any and all other instruments, as may be necessary or proper to carry out the purpose and intent of this Assignment and/or to fully vest Assignee in all rights, titles, interests obligations, and duties of Assignor in and to the Transferred Interest, which instruments shall be delivered to Assignee as soon as possible without any condition or delay on the part of Assignor.

4. Assignee hereby accepts all of Assignor’s rights, title, interest, obligations, and duties under the Special Assessment Agreement and agrees to be bound by its terms. From and after the date of this Assignment and satisfaction of the conditions contained in Section 8.02(b) of the Special Assessment Agreement, Assignee shall be a party to the Special Assessment Agreement and shall have the rights and obligations of the Assignor specified thereunder, and Assignee shall be deemed to be the “Lender” for all purposes of the Special Assessment Agreement.

5. All notices, certificates or communications provided pursuant to the Special Assessment Agreement to Assignee shall be delivered as provided in the Special Assessment Agreement to:



\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Attention)

IN WITNESS WHEREOF, Assignor and Assignee hereby agree to be bound by the terms of this Assignment and each has executed this Assignment to be effective as of the Effective Date.

ASSIGNOR:

\_\_\_\_\_  
[INSERT LENDER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

## APPENDIX H

### FORM OF LENDER CONSENT

Lender Consent and Acknowledgement of Owner Participation in  
Jurisdiction, Michigan, PACE Program

This acknowledgement is granted \_\_\_\_\_, 20\_\_, by NAME OF MORTGAGE HOLDER (the “Lender”), and for the benefit of \_\_\_\_\_ (the “Property Owner”), and Jurisdiction in the State of Michigan.

#### **Recitals**

A. Pursuant to Public Act No. 270 of 2010, Ottawa established the Jurisdiction Property Assessed Clean Energy (“PACE”) Program on \_\_\_\_\_, 20\_\_, by resolution, to promote installation of energy efficiency improvements and/or renewable energy systems.

B. The Property Owner has applied to the Program to finance the amount of \$ AMOUNT OF FINANCING, to be paid back as an assessment on Property Owner’s real property, described in **Appendix D** attached hereto (the “Property”), over a period of twenty years.

C. Owner has previously executed a mortgage, deed of trust, dated \_\_\_\_\_, 20\_\_, to the Lender, covering the Property, to secure a promissory note in the sum of \$ AMOUNT OF LOAN, and recorded on \_\_\_\_\_, 20\_\_ at Liber \_\_\_\_, Page \_\_\_\_\_, \_\_\_\_\_ County Register of Deeds.

D. Repayment by the Property Owner under the PACE Special Assessment Agreement will be a statutory assessment levied against the Property notice of which shall be recorded against the Property in the Office of the County Clerk/Register of Deeds for Jurisdiction, and which assessment, together with interest and any penalties, shall constitute a lien (the “Lien”) on the Property, and shall be collected subject to the terms agreed to between the parties and as contained in the PACE Special Assessment Agreement.

#### **Consent and Acknowledgement**

Lender acknowledges that it has been informed of the Property Owner’s participation in the Ottawa PACE Program, and agrees that Property Owner’s execution of the PACE Special Assessment Agreement will not constitute a default under Lender’s Deed of Trust.

Execution of this Consent and Acknowledgement by Lender’s representative shall constitute full and complete consent to the Property Owner’s participation in the Ottawa PACE Program.

Name of Lender: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_ County, State of \_\_\_\_\_  
Acting in \_\_\_\_\_ County  
My Commission Expires:

## APPENDIX E: SAMPLE SIR GUARANTEE

### SAVINGS GUARANTEE

This Savings Guarantee ("Savings Guarantee") is made and entered into as of this day of \_\_\_\_\_, at \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_, by and between \_\_\_\_\_ ("Contractor"), having principal offices at \_\_\_\_\_, and \_\_\_\_\_ ("Property Owner") having principal offices at \_\_\_\_\_, for the purpose of installing an energy project to save energy and water (the "PACE project") for the Property Owner's building(s), known as \_\_\_\_\_, located at \_\_\_\_\_ (the "Project Site").

#### 1. ENERGY ANALYSIS

Contractor has prepared, and Property Owner has accepted, an energy analysis regarding the PACE project on the Project Site, as set forth in Appendix A, which compares the baseline energy and/or water consumption of the Project Site to the projected energy and water consumption after completion of the PACE project.

Contractor guarantees that subject to (a) the terms of this Savings Guarantee and (b) the assumptions and analysis provided in Appendix A, the savings-to-investment ratio for the PACE project will be greater than one.

#### 2. ENERGY USAGE RECORDS AND DATA

Property Owner agrees to enter their energy use data into the U.S. Government's Energy Star Portfolio Manager, available at: <http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>. Property Owner must use this tool to submit its ongoing energy measurements and verifications to Lean & Green Michigan's Portfolio Manager Account. The use of this tool is free to Property Owner and requires only the cost of labor necessary to utilize it.

#### 3. SAVINGS GUARANTEE AND ANNUAL RECONCILIATION

##### a. Savings Guarantee

For purposes of this Savings Guarantee, the parties adopt and agree to the validity of all assumptions made in the energy analysis provided in Appendix A, including but not limited to any assumptions made regarding current and future energy cost escalation, financial savings, or tax credit savings.

The parties agree that the energy savings guarantee set forth herein will be based solely on these calculations and not on the actual cost of energy, or stipulated savings which are achieved.

##### b. Annual Review and Reimbursement/Reconciliation

Savings shall be measured and/or calculated as specified in Appendix A.

In the event the savings achieved during such guarantee year are less than the guaranteed savings as defined in Appendix A, Contractor shall pay the Property Owner an amount equal to the deficiency. The Contractor shall remit such payments to the Property Owner within 30 days of written notice by the Property Owner.

Notwithstanding the foregoing paragraph, when the total savings in any one year exceed the savings guarantee as set forth in Appendix A, such savings shall be applied to any future shortfalls in projected savings.

**c. Failure to Operate PACE project Properly**

In the event that Property Owner fails to operate or maintain the PACE project in accordance with either the manufacturer's instructions or the assumptions provided for in Appendix A, Contractor shall not be liable for shortcomings in projected savings related to that failure, during the period in which the failure occurred and until such time that the failure is corrected.

Furthermore, any modifications, upgrades, or alterations, without the express written consent of the Contractor, shall absolve Contractor of liability for shortfalls in projected savings related to the performance of the equipment involved for as long as the changes negatively affect the performance of the equipment involved.

**4. EFFECTIVE DATES OF SAVINGS GUARANTEE OBLIGATION**

This Savings Guarantee will continue in force for the duration of the PACE assessment related to the PACE project, unless terminated earlier by the material default of the Property Owner.

**5. ASSIGNABILITY & AMENDMENT**

The Property Owner and Contractor agree that this Savings Guarantee is assignable by the Property Owner upon the transfer or the Property Owner's interest in the real property comprising the Project Site to a new owner. Property Owner will provide written notice of the pending transfer of its interest in the Project Site to Contractor, and will assist the new property owner and contractor with the assignment of this Savings Guarantee.

Contractor may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Savings Guarantee upon notice to and without prior written consent of Property Owner.

No amendment or modification to or of this Savings Guarantee shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by each party.

**6. COMPLETE CONTRACT**

This Savings Guarantee, when executed, together with any Appendices attached hereto shall constitute the entire contract between both parties and this Savings Guarantee may not be amended, modified, or terminated except by a written contract signed by the parties.

**7. APPLICABLE LAW**

This Savings Guarantee and the construction and enforceability thereof shall be interpreted under the laws of the State of Michigan.

**8. NOTICE**

Notice, required or permitted hereunder, shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

To Contractor: ***Contractor Name, Attention: Complete address.***

To Property Owner: ***Property Owner Name, Attention: Complete address.***

**9. SEVERABILITY**

If any provision or section of this Savings Guarantee or the application to any person or circumstance is determined to be invalid or unenforceable by means of law, the remainder of the Savings Guarantee will remain in full force and effect.

**IN WITNESS WHEREOF**, and intending to be legally bound, the parties hereto subscribe their names to this Savings Guarantee by their duly authorized representatives on the date first above written.

ATTEST:

(Property Owner)

(Contractor)

By: \_\_\_\_\_

By: \_\_\_\_\_

## **APPENDIX F: ASHRAE AUDIT AND ENGINEERING COMMISSIONING AND VERIFICATION DESCRIPTIONS**

### **ASHRAE Level I**

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

### **ASHRAE Level II**

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

### **ASHRAE Level III**

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

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

Engineering Commissioning and Verification of the energy projects' remodeled/installed in the subject PACE project is to be performed by a qualified Engineer (engineering commissioning provider). The engineering commissioning provider is required to review the design, installation and performance of the remodeled/new building systems and compare to the Energy Audit or study or model (Energy Audit and/or Renewable Energy Feasibility Study) according to an industry accepted Commissioning guideline or Commissioning scope of work approved by Program Administrator. The final commissioned systems should be configured as modeled in the Energy Audit and/or Renewable Energy Feasibility Study for the remodeled/new systems that are included in the scope of the subject PACE project. The remodeled/new systems are to be reviewed and tested for proper function per specified design criteria and sequences. All deficiencies are to be communicated to the building owner and shall be resolved.

## APPENDIX G: MORTGAGE LENDER CONSENT

### LENDER CONSENT FORM

Lender Consent and Acknowledgement of Owner Participation in  
County of [COUNTY NAME], Michigan PACE Program<sup>5</sup>

This acknowledgement is granted [DATE], by [LENDER NAME] (the “Lender”), and for the benefit of [PROPERTY OWNER LEGAL NAME] (the “Property Owner”), and [COUNTY NAME] County (“the County”) in the State of Michigan.

#### **Recitals**

A. Pursuant to Public Act No. 270 of 2010, the County established the [COUNTY NAME] County Property Assessed Clean Energy (“PACE”) Program on [DATE], by [RESOLUTION #] to promote installation of energy efficiency improvements and/or renewable energy systems.

B. The Property Owner has applied to the Program to finance the improvements outlined in **Appendix** \_\_ attached hereto on the Property Owner’s real property, described in **Appendix** \_\_ attached hereto (the “Property”). The Property Owner desires to enter into a PACE Special Assessment Agreement with the County and Greenworks Lending (the “PACE Lender”) pursuant to which the PACE financing will be paid back as an assessment on the Property. The related payment terms are proposed to consist of the following:

- Total Cost of Energy Improvements: \$
- Total PACE Financing Amount\*: \$
- Total Annual Special Assessment\*\*: \$
- Annual interest rate not to exceed: %
- Term of repayment period: \_\_\_\_ years
- Payments per year: \_\_\_\_\_

*\* Includes all Program fees and capitalized interest during construction. PACE financing may be provided for up to 110% of the financing amount. As such, the above amounts are subject to minor deviation*

*\*\* Includes annual collection fees*

C. Owner has previously executed a mortgage, deed of trust, dated \_\_\_\_\_, 20\_\_, to the Lender, covering the Property, to secure a promissory note in the sum of \$ AMOUNT OF LOAN, and recorded on \_\_\_\_\_, 20\_\_ at Liber \_\_, Page \_\_, \_\_\_\_\_ County Register of Deeds.

D. Repayment by the Property Owner under the PACE Special Assessment Agreement will be a statutory assessment levied against the Property notice of which shall be recorded against the Property in the Office of the County Clerk/Register of Deeds for [COUNTY NAME] County, Michigan, and which assessment, together with interest and any penalties, shall constitute a lien (the

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<sup>5</sup> If property being improved has no mortgage, please submit documentation demonstrating such.



“Lien”) on the Property, and shall be collected subject to the terms agreed to between the parties and as contained in the PACE Special Assessment Agreement.

**Consent and Acknowledgement**

Lender acknowledges that it has been informed of the Property Owner’s participation in the [COUNTY NAME] County PACE Program, and hereby consents to the assessment and agrees that Property Owner’s execution of the PACE Special Assessment Agreement will not constitute a default under Lender’s Deed of Trust.

Lender understands that, pursuant to Michigan Compiled Laws, Chapter 460. Public Utilities § 460.943, the assessment described herein constitutes a lien against the property on which the assessment is imposed until the assessment, including any interest or penalty, is paid in full and the lien runs with the property and has the same priority and status as other property tax and assessment liens. Lender further understands that as a result of the PACE Special Assessment Agreement between [COUNTY NAME] County and the Property Owner, the assessment described herein will be levied on the Property, and that the assessment will be collected in installments subject to the same penalties, remedies, and lien priorities as real property taxes.

Execution of this Consent and Acknowledgement by Lender’s representative shall constitute full and complete consent to the Property Owner’s participation in the [COUNTY NAME] County PACE Program.

Name of Lender: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) ss

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_  
County, State of \_\_\_\_\_  
Acting in \_\_\_\_\_ County  
My Commission Expires:

## APPENDIX H: INSTALLATION VERIFICATION FORM

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[DATE]

Lean & Green Michigan  
3400 Russell Street, Suite 255  
Detroit, Michigan 48207

To Whom it May Concern:

We write to you in your capacity as Administrator of [LOCAL JURISDICTION]'s Property Assessed Clean Energy (PACE) program.

[PROPERTY OWNER] has worked under [LOCAL JURISDICTION]'s PACE program to finance an energy project located on [PROPERTY OWNER]'s property located at [PROJECT ADDRESS].

By way of this letter, [PROPERTY OWNER] hereby verifies in accordance with MCL 460.939(o) that said energy project has been successfully installed and is working properly in all respects.

The energy project, which included [PROJECT DESCRIPTION], and a variety of other measures, has received all approvals required by the City of \_\_\_\_\_ and \_\_\_\_\_ County, and the City of \_\_\_\_\_ and \_\_\_\_\_ County also consider the project to be completed satisfactorily.

Sincerely,

---

Signed by:  
Title:  
[PROPERTY OWNER]

---

Signed by:  
Title:  
[CONTRACTOR]

# APPENDIX I: EPA PORTFOLIO MANAGER PROPERTY SHARING

## INSTRUCTIONS

EPA ENERGY STAR Portfolio Manager is a free website that enables property owners to easily track energy and water use, compare their buildings against benchmarks, determine Energy Star Ratings, and share results with others. For Large PACE Financings, LAGM requires property owners who complete Large PACE Financings to utilize Portfolio Manager to share relevant pre- and post- improvement energy and water use data.

Property owners can use Portfolio Manager to track improvements in building performance following completion of a PACE project. The guide below will help with account creation and data sharing. See Section 4.4.2 of the Program Manual for specific reporting requirements.

1. Create an account:
  - a. <https://portfoliomanager.energystar.gov/pm/login.html>
  - b. Click “Create a New Account”
  - c. Create a username and password, and complete the remaining profile information.
  - d. Click “Sign Up” on the right.
  - e. Under “Searchability in Portfolio Manager”, select “Yes”.
  - f. Click “Create My Account”
  
2. Add a property:
  - a. From the MyPortfolio tab, click “Add a Property”.
  - b. Select your property type and number of buildings.
  - c. Under “Your Property’s Construction Status”, if your PACE project consists of updates to an existing property, select “Existing”. Otherwise, if your PACE project is part of a new construction, select “Design Project”.
  - d. Click “Get Started” to go to the next page.
  - e. For the name of your property, please enter the street address.
  - f. Enter remaining basic property detail and click “Continue”.
  
3. Add LAGM as a contact:
  - a. Click on “Contacts” in the upper-right of the screen.
  - b. Click “Add Contact”.
  - c. Search for the username “LEP” or organization “Lean & Green Michigan”.
  - d. Select Lean & Green Michigan and Click “Connect”.
  - e. Once Lean & Green Michigan has accepted the request, an added property can be shared.
  
4. Share a property with LAGM:
  - a. Click the “Sharing” tab.
  - b. Click the “Share (or Edit Access to) a Property”.
  - c. Select “One Property” from the dropdown menu, then select the property to be shared.
    - i. In the new version of Portfolio Manager you will need to also select “full access”.
  - d. Select “LAGM” from the contacts book list.
  - e. Determine permissions/level of sharing access
  - f. Click “Share Property(ies)”.

## APPENDIX J: PACE EXPRESS POLICY

### Policy on PACE Express

*as of March 3, 2020*

#### General

PACE projects with an assessment of \$250,000 or below (each, a “PACE Express Financing”) have fewer statutory requirements than PACE projects with an assessment in excess of \$250,000. Therefore, Lean & Green Michigan (“LAGM”) has created an expedited PACE product for deals of this size to reduce the cost of PACE, both from a fee and legal cost standpoint (“PACE Express”). In order to encourage the ability to deploy the benefits of PACE projects below the statutory threshold of \$250,000, LAGM has prepared a locked model closing document packet, which several lenders have agreed to use, and which will result in an expedited closing process for project financing.

#### Requirements

Among other requirements, Michigan’s Property Assessed Clean Energy Act of 2010 requires that PACE projects over \$250,000 (each, a “PACE Financing”) achieve a savings-to-investment ratio (“SIR”) greater than 1, which SIR is required be guaranteed by the contractor pursuant to a savings guarantee (“Savings Guarantee”).

PACE Express Financing projects are not subject to the requirements of the SIR or Savings Guarantee. They remain subject to all other requirements under the statute; including:

- Property must be privately owned commercial or industrial real property; including multi-family residential property.
- Property must not be delinquent on any taxes, special assessments, or water or sewer charges on the property. MCL 460.941(2)(a).
- Property must not be delinquent on any assessments on the property under a PACE program. MCL 460.941(2)(b).
- The term of assessment shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years. Projects that consist of multiple energy efficiency improvements or renewable energy systems with varying lengths of useful life may blend the lengths to determine an overall assessment term that does not exceed the useful life of the improvements in aggregate. MCL 460.939(i).
- An appropriate ratio must be determined for the amount of assessment in relation to the assessed value of the property. MCL 460.939(j).
- Written consent from the mortgage holder must be obtained if the property is subject to a mortgage. MCL 460.939(k).
- A baseline energy audit must be conducted for the property that is approved by LAGM. Such approval may be granted retroactively if the audit meets the standards of LAGM. MCL 460.939(o).

LAGM conducts a review of the proposed project as part of the application process, to ensure compliance with the above requirements. Property Owners with PACE Express Financing projects may choose to utilize one of two methods to proceed to a closing and the creation of the special assessment:

1. **Standard PACE:** Property Owners may elect to follow the standard PACE route, and fully negotiate unique set of documents for the creation of the special assessment, including the required Special Assessment Agreement (“SAA”) executed by the Property Owner, lender, and local jurisdiction. These projects will be subject to full LAGM closing fees:
  - a. Closing fee: 2% of the project costs
  - b. Administration Fee: 25 bps, incorporated into the interest rate, for the term of the financing
  - c. Legal Fee: \$5,000.00 due at closing
  
2. **PACE Express:** Property Owners may elect to follow the PACE Express route. This route includes a pre-negotiated set of documents, which LAGM, participating lenders and member jurisdictions have agreed to. LAGM will complete the Special Assessment Agreement with the project specific data, and provide it to all parties for review. Terms contained within the SAA will not be negotiated or modified in any manner. These projects will be subject to reduced LAGM closing fees:
  - a. Closing fee: 1.5% of the project costs
  - b. Administration Fee: None
  - c. Legal Fee: 2% of the project costs (subject to a cap of \$2,500.00), due at closing

#### PACE Express Application Process

The PACE Express Application Process is similar to the traditional PACE process. The Property Owner will need to submit the necessary documents, with the aid of a PACE contractor and PACE lender. LAGM is available to assist the Property Owner at all stages of the process and will assist in identifying contractors and participating lenders.

The Property Owner will need to submit the PACE Express Application, which is appended to this policy document, and is also available by emailing [info@leanandgreenmi.com](mailto:info@leanandgreenmi.com). The application does require the submission of supporting documentation, including:

- Proof of Property Value – established by either 2xSEV or a 3<sup>rd</sup> party Appraisal
- ASHRAE Level 1 Energy audit, including (i) a demonstration of energy savings and (ii) useful life determinations of all ECM’s. An equivalent baseline energy audit performed on the property may be submitted, but must approved by LAGM prior to completion
- Current Mortgage Statement and Lender Consent from Mortgage Holder
- Property Tax Record (LAGM will assist in retrieving current property tax information)
- Title Report

LAGM will work with the Property Owner, lender, and contractor to complete their review of the submitted information and will generate the SAA based on the information provided. All Parties will have a chance to review the final document package for information accuracy and will close on an agreed upon date. LAGM will coordinate the execution of documents and will record the fully executed SAA with the appropriate Register of Deeds.

#### Participating Lenders:

LAGM will maintain a list of participating PACE Express lenders on its website, [www.leanandgreenmi.com](http://www.leanandgreenmi.com).

PACE Express Documents:

The PACE Express Application and Model Special Assessment Agreement are contained on the following pages. If you have any questions concerning the documents or process, please contact [info@leanandgreenmi.com](mailto:info@leanandgreenmi.com) or call (313) 444-1474.

## APPENDIX K: NEW CONSTRUCTION POLICY

### Energy Baseline & Savings-to-Investment Ratio Policy for New Construction & Gut Rehab PACE Projects

*as of March 1, 2020*

#### General

New construction and gut rehab projects, unlike existing-building retrofits, do not necessarily benefit from a history of pre-improvement energy consumption data from which baseline energy consumption can be formulated. Without the benefit of this baseline building performance data, additional Energy Assessment<sup>6</sup> guidelines are necessary. Lean & Green Michigan (“LAGM”) provides two pathways to measure the incremental improvements over a baseline: a gut rehab path and/or a new construction path.

#### Gut Rehab Path

In the case where there is an existing structure, equipment, and/or a property that has been in prior use which can theoretically be restored to its prior use or converted to a new use, the baseline may be modeled on the efficiency of the existing structure and equipment.

For example, a 100-year-old structure that has existing windows and building envelope, an existing boiler, and existing lights would model the energy savings based on improvement from these existing features, as if the equipment was still in use.

PACE projects following the gut rehab path must submit an energy model that is similar to an ASHRAE level II audit as part of the Energy Assessment, including useful life calculations of each proposed installed energy conservation measure (“ECM”).

#### New Construction Path

PACE projects electing to follow the new construction path must demonstrate that the PACE project exceeds the applicable IECC or ASHRAE 90.1 standard under Michigan code<sup>7</sup> by means of an energy model similar to an ASHRAE Level II energy audit that demonstrates the savings of each ECM. Each ECM that is financed using PACE financing must meet one or more of the following requirements to demonstrate savings:

1. the ECM exceeds Michigan code;

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<sup>6</sup> Energy Assessment is defined as an assessment of the energy efficiency, water conservation or renewable energy measures proposed for the PACE Project conducted by the project contractor or professional engineer in compliance with the Property Assessed Clean Energy Act of 2010.

<sup>7</sup> The state of Michigan has effectuated the 2015 IECC, which incorporates the ASHRAE 90.1-2013 standard.

2. the ECM results in a building that is more energy- and/or water-efficient that is required by Michigan code; or
3. the ECM produces renewable energy (including, but not limited to solar, wind, or geothermal energy).

New construction projects that only finance renewable energy improvements will require an energy model demonstrating savings and the useful life of the renewable energy improvements, but will not require energy modeling similar to an ASHRAE Level II energy audit.

#### Savings-to-Investment Ratio for PACE Projects over \$250,000

Michigan's Property Assessed Clean Energy Act of 2010 requires that PACE projects over \$250,000 (each, a "Large PACE Financing") achieve a savings-to-investment ratio ("SIR") greater than 1, which SIR is required be guaranteed by the contractor pursuant to a savings guarantee ("Savings Guarantee").

To meet this SIR requirement, LAGM requires that the energy, water, maintenance, and other documentable operations cost savings and financing & tax benefits over the estimated useful life of the ECMs (the "Total Savings") must be greater than the Large PACE Financing amount.<sup>8</sup> One example of a financing benefit that may be includable in the Total Savings is the savings from using PACE financing instead of more expensive financing, such as mezzanine debt (provided that this financing benefit is proven by means of the submission of a valid term sheet from an appropriate lender indicating the term and interest rate of such alternative financing). Examples of tax benefits that may be includable in the Total Savings are (i) depreciation of the asset underlying the ECM and (ii) any solar/renewable tax credits obtained by the installation of an ECM. Note that the Total Savings is subject to review of the property owner, and the property owners may agree to stipulate any financing and tax benefits that are included in the Savings Guarantee.

LAGM conducts a review of the SIR as part of the application process. For the purposes of the SIR calculation, the initial investment may be based on the Large PACE Financing amount, which includes closing financing costs and other soft costs or the direct installation cost of the PACE Project, but not interest over the life of the loan. For the avoidance of doubt, if the Large PACE Financing is in the amount of \$1,000,000, the parties may elect to calculate based on a Total Savings greater than \$1,000,000 (not \$1,000,000 plus interest over the life of the loan).

The Total Savings represent the projected annual energy, water and maintenance cost savings and financing & tax benefits attributed to the project, as stated in the Savings Guarantee and Energy Assessment. The cost savings calculations may be inflated based on documented inflation expectations established by historical prices and/or reasonable forecasts available from sources

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<sup>8</sup> Large PACE financing amount is inclusive of installation cost of ECMs, eligible soft costs, and closing costs.



such as the US Energy Information Administration Annual Energy Outlook. Such savings will be inflated over a period of time equal to the useful life of the ECM(s) installed in the subject PACE Project. The Energy Assessment for the Large PACE Financing shall contain the energy engineers' calculation for the useful life of each of the ECMs, including all assumptions.

#### Hybrid Gut Rehab and New Construction Projects and SIR calculations

When a PACE project consists partially of a gut rehab project and partially of a new construction project, the SIR shall be calculated using the appropriate baseline for the applicable ECM. For example, windows on the existing structure that are being replaced would use the windows as a baseline, but the ECMs on the new construction aspects of the project would be compared against Michigan code.

## APPENDIX L: LAGM PACE ADMINISTRATOR FEES

Lean & Green Michigan's current chart of fees is described herein. LAGM administers the PACE program for local jurisdictions across Michigan, growing a uniform marketplace for contractors and lenders to participate in. All fees are based on projects which close a PACE financing. LAGM does not charge fees to our local jurisdictions. LAGM does not charge fees contractors, lenders, or property owners for the exploration or development of projects. LAGM only collects fees at the time of closing.

### How does LAGM determine its fees?

LAGM determines its fees based on the actual hard and soft costs of the PACE project. For projects above \$250,000 in PACE financing, please refer to the PACE Fees section below. For project with less than \$250,000 in PACE financing, please refer to the PACE Express Fees section below.

### PACE Fees

LAGM charges two fees which are due at the time of closing and funding the PACE project, a *closing fee* and a *legal fee*. The legal fee is a flat \$5,000. The closing fee, which is capped at \$150,000, declines as the size of the project increases, as detailed in the table below:

<b>Closing Fee (capped at \$150k)</b>		
	First \$2,000,000	2.00%
	Second \$2,000,000	1.50%
	Third \$2,000,000	1.00%
	Amounts over \$6,000,000	0.50%
<b>Legal Fee</b>		\$5,000.00
<b>On-Going Admin Fee</b>	Only on first \$10,000,000	25bps

Therefore, for a project with \$7,000,000 in eligible costs, the closing fee would be \$95,000 ( $(\$2M \times 2\%) + (\$2M \times 1.5\%) + (\$2M \times 1.0\%) + (\$1M \times 0.5\%)$ ).

Additionally, LAGM charges an *on-going administration fee* of 25 basis points added to the interest charged on the project. This fee is capped and is only charged on the first \$10,000,000 of eligible costs, and follows the repayment of the PACE assessment. If the PACE assessment has \$20,000,000 in eligible costs, then the ongoing administration fee would be 12.5 basis points (25 bps on the first \$10M and 0 bps on the remaining \$10M). Note that if the PACE assessment is paid off early, there would be no remaining on-going administration fee.

### PACE Express Fees

LAGM charges reduced fees for projects which participate in the PACE Express program. This program includes a pre-negotiated set of documents, to which LAGM, participating lenders and member jurisdictions have agreed. LAGM will complete the special assessment agreement with the project specific data and provide it to all parties for review. Terms contained within the SAA will not be negotiated or modified in any manner, which results in lower fees.

As shown in the table below, the PACE Express *legal fee* is 2% of the eligible costs and is subject to a cap of \$2,500. The *closing fee* is 1.5% of the eligible project costs. Note that there is no on-going administration fee for PACE Express projects.

<b>Closing Fee</b>	1.50%
<b>Legal Fee</b>	2% (capped at \$2,500)
<b>On-Going Admin Fee</b>	none