

**COMMERCIAL PROPERTY ASSESSED  
CLEAN ENERGY (“MD-PACE”) AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, between [ \_\_\_\_\_ ], Maryland, a political subdivision of the State of Maryland (the “County”), and the Maryland Clean Energy Center, a body politic and corporate and a public instrumentality of the State of Maryland (“MCEC”).

**RECITALS**

1. A Commercial Property Assessed Clean Energy program is a program to facilitate loan financing for clean energy improvements to commercial properties by utilizing a state or local tax assessment mechanism to provide security for repayment of the loans.

2. Pursuant to §1-1102 of the Act (as defined below), counties and municipalities may enact ordinances or resolutions to establish a clean energy loan program.

3. The County has authorized and established a commercial property assessed clean energy loan program (“the PACE Program”) pursuant to [ \_\_\_\_\_ ], as attached hereto as Exhibit 1 (the “[ \_\_\_\_\_ ]”).

4. [ \_\_\_\_\_ ] permits the County to enter into an agreement with a PACE program administrator.

5. MCEC agrees to work with the County to implement the MD-PACE Program and to obtain financing for the Program.

6. To secure financing for the program, MCEC and the County are authorized by the [ \_\_\_\_\_ ] to enter into a written agreement pursuant to which the County has agreed to assess and collect, remit and assign surcharges to MCEC in return for qualifying energy improvements for Commercial Property Owners within the County and for costs reasonably incurred by the County in performing those duties.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements set forth in this Agreement, for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in order to effectuate the purposes of the [*County legislation*], the parties agree as follows:

**ARTICLE I**  
**DEFINITIONS**

(a) *Act* means §§1-1101 et seq. of the Local Government Article.

(b) *Commercial Property* means any real property as defined in §1-1101(d) of the Act, including residential dwellings containing more than four single dwelling units.

(b) *Local Government Article* means the Local Government Article of the Annotated Code of Maryland, as it may be amended.

(c) *PACE Program* means the clean energy loan program authorized by the Act, and established by the [County legislation], the purpose of which is to provide loans to Property Owners to finance energy efficient projects and renewable energy projects.

(d) *Property Owner* means the owner of qualified Commercial Property.

(e) *Qualifying Improvements* means energy efficiency projects and renewable energy projects, and any equipment, device, system or material, either new or replacement, that is intended to reduce energy consumption or expand the use of renewable energy sources, including:

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1. Solar energy equipment;
2. Geothermal energy devices;
3. Wind energy systems;
4. Any construction, renovation or retrofitting of commercial property to reduce energy consumption, including, high efficiency lighting and building systems, heating ventilation air conditioning (HVAC) upgrades, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, building shell or envelope improvements, fenestration improvements, building energy management systems, and process equipment upgrades;
5. installation of a renewable energy system to service qualifying commercial real property, or insulation in any wall, roof, floor, foundation, or heating and cooling distribution system;
6. a storm window or door, multi-glazed window or door, heat-absorbing or heat-reflective glazed and coated window and door system, or additional glazing, reduction in glass area, and other window and door system modification that reduces energy consumption;
7. an automated energy control system;
8. a heating, ventilating, or air-conditioning and distribution system modification or replacement;
9. caulking, weather-stripping, and air sealing;
10. replacement or modification of a lighting fixture to reduce the energy use of the lighting system;

11. an energy recovery system;
12. a day lighting system;
13. the installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;
14. any other installation or modification of equipment, device, or other material intended to decrease energy consumption or expand the use of a renewable energy source;
15. any measure or system that makes use of or expands a renewable source of energy, including solar water heater, solar thermal electric, photovoltaics, wind, biomass, hydroelectric, geothermal electric, geothermal heat pumps, anaerobic digestion, tidal energy, wave energy, ocean thermal, fuel cells using renewable fuels, and geothermal direct-use;
16. any renewal energy system that is a fixture, product, device or interacting group of fixtures, products, or devices on the customer's side of the electricity meter that uses at least one renewable energy source to generate electricity. A renewable energy system includes a biomass system, but does not include an incinerator or digester; and/or
17. any other improvement approved by the County and MCEC as an energy efficiency or renewable energy project.

(f) *Surcharge* means the assessment levied by the County on a Property Owner's property tax bill to collect Pace Program loan payments owed to a private lender by the Property Owner and costs of administering the PACE Program in accordance with the Act and as authorized by the [County legislation].

(g) *Surcharge Lien* means the lien automatically established upon the County's levy of the Surcharge on the property tax bill.

## **ARTICLE 2** **OBLIGATIONS OF MCEC**

Pursuant to this Agreement, MCEC will have the following obligations:

(a) **Program Requirements.**

1. Shall develop program guidelines governing the terms and conditions under which a Property Owner may access a PACE Program loan from a private lender, pursuant to the Act and the [County legislation].

2. Shall receive and review applications submitted by Property Owners within the County for financing of Qualifying Improvements, and approve or disapprove each

application in accordance with underwriting procedures and requirements established by MCEC and in accordance with State law.

3. Shall prepare and deliver to the County an annual report which shall contain information related to the PACE Program within the County, including:

(i) A list of each Commercial Property for which the Property Owner executed a clean energy loan agreement during the prior year;

(ii) A list of each Commercial Property where all obligations under the clean energy loan agreement have been satisfied or paid in full during the prior year, including the satisfaction date and a copy of the notice of satisfaction, if required; and

(iii) For each unpaid Surcharge:

A. The date of the clean energy loan agreement;

B. The total principal balance and accrued interest outstanding on the clean energy loan; and

C. The annual payment(s) due, which shall include principal and accrued interest (including the amount of accrued interest on the initial payment, if different), and the fees for the costs of administering the PACE Program.

(b) Project Requirements. If a Property Owner requests approval from MCEC for Qualifying Improvements, MCEC shall:

1. Require proof that the Property Owner owns 100% of the interests in the property located in [ ] County for which Qualifying Improvements are proposed;

2. Require that the Property Owner demonstrate that the proposed project is consistent with the requirements of the Act and [*County legislation*] and is a Qualifying Improvement;

3. Impose requirements and criteria to ensure that the proposed energy improvements are consistent with the purpose of the PACE Program;

4. Require that the Property Owner, prior to the execution of the clean energy loan agreement, provide a copy of the written notice to all current holders of a mortgage or deed of trust who have a priority recorded lien on the property and written proof of express consent by all current holders of a mortgage or deed of trust on the Commercial Property to the PACE Program loan, along with an acknowledgement of the priority of the Surcharge Lien;

5. Require that the lender demonstrate to MCEC that the Property Owner is able to repay the loan under the lender's underwriting standards which are substantially similar to the criteria set forth in the Act and the [*County legislation*]; and

6. Require the Property Owner to provide proof that all outstanding property taxes, assessments, and charges have been paid.

(c) Financing Agreement for Project.

1. A private lender may provide financing to a Property Owner to finance Qualifying Improvements, which loan will be non-accelerating and will survive a change of ownership, whether voluntary or involuntary.

2. Each loan agreement shall clearly state the final Surcharge that will be levied against the PACE Program Commercial Property.

3. Each loan agreement shall contain a Disclosures and Risks Form executed by the Property Owner.

4. Upon the submission of a loan agreement to MCEC by a private lender and Property Owner with an approved project, MCEC shall (i) establish the Surcharge, including all fees for the operation of the PACE Program, and (ii) provide a Notice to the County to Commence Levy and Collection of Surcharges for a Clean Energy Loan Program, which notice shall contain a copy of the PACE Program loan agreement and the Payment Schedule. If the County has semi-annual billing for real property taxes, the Surcharge shall be payable in two equal payments respectively payable on \_\_\_\_\_ and \_\_\_\_\_ of each year so that they are due at the same time as the installments of the County's real property taxes. If the County changes its practices concerning the billing of annual real property taxes as to the number of installments and their due dates, MCEC will change its practices to the extent possible to correspond with the County's practices.

**ARTICLE 3**  
**OBLIGATIONS OF THE COUNTY**

(a) Surcharge Billing, Collection and Disbursement to MCEC.

1. The County shall select, within thirty (30) days of the date of this Agreement, a PACE Program coordinator within the tax collector's office who will assist in Surcharge assessments and collection as set forth in this Agreement.

2. The County shall add a Surcharge to its real property tax bill(s) and shall send a copy of the tax bill containing the Surcharge to MCEC within 30 days of the County's initial tax billing.

3. The purpose of the Surcharge is to repay the clean energy loan under the PACE Program loan agreement and to cover costs to operate the PACE Program. The Surcharge shall be a separate clearly defined line item or separate bill and shall be due on the same date(s) as the County's real property taxes. The amount of the Surcharge will be recorded on the County's tax rolls in the same manner as any other tax, such that the public will have access to its existence and payment status. The penalties and interest on delinquent Surcharges shall be charged in the same manner and rate as the County charges for delinquent real property taxes. Once the obligation to assess, levy, collect and disburse Surcharge payments to MCEC is triggered, the obligation survives termination and/or opting-out of this Agreement by the County.

(i) Surcharges collected by the County shall be segregated from all other funds of the County and deposited into a separate account for the benefit of MCEC and identifying MCEC or its trustee as the beneficial owner. The County disclaims any ownership interest or other interests in such account or the amount collected.

(ii) The County shall pay all amounts collected within any calendar month to MCEC no later than thirty (30) days after the month that the amounts are collected. The County will provide collection reports to MCEC, and MCEC, at its own expense, shall have the right to audit the records relating to the Surcharges upon reasonable notice at reasonable times. MCEC and the County agree to provide each other with information as they may reasonably request. MCEC and the County agree to provide such information in a computer format satisfactory to the other. Reported information may include data necessary for MCEC to include in its annual report required by this Agreement. Required information shall not include information which is deemed confidential information by law or any proprietary or confidential information from loan applicants or relating to the underwriting of any particular PACE Program loan. The County shall not disclose any information contained in the books and records of MCEC, except as may be required by any applicable law.

(b) Levy of Surcharge. Upon receiving written notice from MCEC that a PACE Program loan agreement has been executed, the County shall promptly file a Notice of Levy and Lien of Surcharge in the County land records. Within sixty (60) days following execution of a PACE Program loan agreement, the County shall add the Surcharge to the real property tax bill. The Surcharge levied pursuant to this Agreement, State Code, and [*County legislation*], and the interest, fees and any penalties thereon shall constitute a lien against the Commercial Property on which they are made until they are paid. The Surcharge Lien shall be levied and collected in the same manner as the property taxes of the County on real property, including, in the event of default or delinquency, with respect to any penalties, fees and remedies and lien priorities as provided by the [*County legislation*] and State law.

(c) Collections. Upon the written a failure of a Property Owner to pay a Surcharge within the appropriate timeframe, the County shall institute a tax lien collection pursuant to State law. Funds collected from a tax sale of a Commercial Property subject to a Surcharge shall be paid to MCEC as set forth in Section (a)(3) above.

(d) In the event that any Property Owner fails to make a Surcharge payment when due in any property tax billing cycle, the County shall provide written notice to MCEC of such delinquency within thirty (30) days.

(e) Amendment of the Surcharge Amount. Pursuant to the PACE Program loan agreement, the final amount of the Surcharge may be adjusted after the levy of the Surcharge Lien. Such an adjustment would likely be the result of a change in the energy improvement service contract amount during the construction period, a change in the amount of capitalized interest, or an amendment to the PACE Program loan agreement. In the event that the final Surcharge amount needs to be adjusted at the completion of the project, or any other time, MCEC will inform the County of the change, provide the County with an updated payment schedule and new Surcharge amount, and the County shall amend the Surcharge Lien to reflect the adjustment.

(f) PACE Program Administration Costs.

1. The County may include an administration fee to cover their costs that will be collected by the MD-PACE program and remitted to the county. Reimbursable costs and expenses include reasonable costs incurred by the County in conjunction with any and all proceedings to collect and enforce the Surcharges and delinquent Surcharges, including foreclosure proceedings.

2. The County will provide written notice to MCEC prior to any sale or assignment of its real property taxes or any institution of a judicial foreclosure or other proceeding against any real property for delinquent real property taxes if such real property is subject to a delinquent Surcharge.

**ARTICLE 4**  
**TERM**

The term of this Agreement shall commence upon the date the last party executes the Agreement. This Agreement shall remain in full force and effect until all of the Surcharges levied by the County have been paid in full or deemed no longer outstanding. Either party may terminate this Agreement at any time upon ninety (90) days' advance written notice to the other party, provided that the County's obligations to collect Surcharges for PACE Program loan made prior to the termination date shall continue until all Surcharges (including the interest, penalties, and fees thereon) have been collected and the all such PACE Program loans have been paid in full.

**ARTICLE 5**  
**DEFAULT**

Each party shall give the other party written notice of any breach of any covenant, provision or term under this Agreement and shall allow the defaulting party thirty (30) days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the thirty (30) days, to commence and thereafter diligently attempt to cure, using good faith efforts to effect such cure and to thereafter notify the other party of the actual cure of any such default. The parties shall have all other equitable rights and remedies provided by law, including, but not limited to, specific performance.

**ARTICLE 6**  
**MISCELLANEOUS PROVISIONS**

(a) Assignment or Transfer by County. The County may not assign or transfer its rights or obligations under this Agreement without prior written consent of MCEC.

(b) MCEC Agent. The County acknowledges and agrees that MCEC may employ a third party to undertake MCEC's obligations under this Agreement, subject to approval by the County (an "MCEC Agent"). In the event that MCEC employs an MCEC Agent, MCEC will notify the County in writing of the name and contact information of the MCEC Agent. The County agrees that that for purposes of this Agreement, the MCEC Agent shall speak and act for

MCEC and that any notices required under the terms of this Agreement to be sent to MCEC shall also be sent to the MCEC Agent. In the event that MCEC is to be dissolved, MCEC may assign and transfer its rights under this Agreement to the MCEC Agent, subject to the County's right to terminate this Agreement under Article 4. The County consents to PACE Financial Servicing, LLC being the MCEC Agent. PACE Financial Servicing, LLC's address is:

28 Thorndal Circle  
Darien, CT 06820

(c) This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their successors and permitted assigns.

(d) Amendment/Termination/Waiver. This Agreement may not be amended or terminated by the parties without the prior approval of the private lender for any PACE Program Loan. Any waiver of any provision of this Agreement must be in writing and mutually agreed to by MCEC and the County. Except for the specific provision of the Agreement which is amended, the Agreement remains in full force and effect after such amendment and is subject to the same laws, obligations, conditions, provisions, rules, and regulations, as it was before the amendment.

(e) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(g) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, hand delivered, or overnight delivery service, to the parties, as follows:

If to the County:

INSERT COUNTY NAME  
INSERT STREET ADDRESS  
CITY, STATE, ZIP CODE  
Attention: INSERT NAME

If to MCEC:

Maryland Clean Energy Center  
212 West Street, Suite 200  
Annapolis, MD 21401  
Attention: Executive Director



(h) Applicable Law and Venue. This Agreement shall be construed, interpreted, and enforced according to the laws of the State of Maryland. Any claim brought in connection with this Agreement must be brought in the State Courts of Maryland and the parties consent to the jurisdiction of the State Courts of Maryland.

(i) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement, and do not affect its meaning or construction.

(j) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(k) Nothing in this Agreement, and no act of the County or MCEC, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the County and MCEC.

*[Remainder of the page intentionally blank]*

**IN WITNESS WHEREOF**, the County and MCEC have each caused this Agreement to be executed and delivered as of the date set forth above:

ATTEST: [ ] COUNTY

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

By: \_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_  
Title : \_\_\_\_\_

ATTEST: MARYLAND CLEAN ENERGY CENTER

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_