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TO: Felicia Brabec  
Chair, Ways & Means Committee

THROUGH: Verna J. McDaniel  
County Administrator

FROM: Gregory Dill  
Director, Office of Infrastructure Management

DATE: December 4, 2013

SUBJECT: A Resolution Approving a Resolution of Intent to Create a  
Property Assessed Clean Energy ("PACE") Program in  
Washtenaw County

**BOARD ACTION REQUESTED:**

It is requested that the Board of Commissioners approve a Resolution of Intent to create a Property Assessed Clean Energy Program in Washtenaw County with the PACE District comprising the geographical boundary of the County.

**BACKGROUND:**

In the fall of 2010, the Michigan Legislature enacted the Property Assessed Clean Energy Act ("PACE") ("MCLA 460.931 et seq). The Governor signed the legislation and it went into effect on December 14, 2010. The PACE legislation provides innovative financial options for proposed energy projects that will save energy, water or install renewable energy. Under Michigan's PACE Act, these financing options are only available to commercial, industrial and multi-family properties; single family residences are not currently eligible under the Act.

Once a governmental entity establishes a PACE district, eligible property owners may obtain financing from a private lender to complete certain energy projects on their property, which is then treated as a special assessment district. A special assessment district may only be created under the PACE Act with the permission of the property owner, the lender advancing the funds for the proposed energy project and any other pre-existing lenders who may have prior liens on the property. This is because, once created, the special assessment district is senior to any existing private liens on the property. Without the written permission of the property owner and the lender and any pre-existing lien holders, a special assessment may not be established. Up to 100% of the proposed energy project's cost can be covered under a PACE special assessment.

Because financing under PACE creates a special assessment district enforced by the local government, energy projects using this financing may be amortized for between 10-20 years, much longer than a traditional loan extended for an energy project. It should also be noted that the PACE legislation requires the Contractor doing work on any PACE project of \$250,000.00 or higher to guarantee the energy saving on that project.

PACE special assessments “run with the land” which means that if the original property owner ever sells the property, the new owner(s) would remain legally responsible to continue to repay the annual special assessment amount until it was fully paid. If a property owner defaults on the payment of the special assessment, it would be treated as a delinquent property tax and handled by the County Treasurer as part of the delinquent tax process.

Washtenaw County is considering creating a PACE District which would include the entire County. If approved, the Washtenaw County’s PACE Program would join Lean & Green Michigan, (“Lean & Green”) a public-private partnership and to utilize Levin Energy Partners, LLC to administer the Program. Lean & Green has extensive experience with other governmental entities which have approved PACE Districts for their respective jurisdictions, including several counties. Lean & Green takes a market based approach to energy finance and economic development by leveraging the benefits of the PACE Act to maximum effect by encouraging private capital to finance projects to solve companies’ energy problems. In addition, the law firm of Miller, Canfield would provide legal services to those entities which joint Lean & Green. The County would incur no charge to joint Lean & Green or to establish the PACE District. Any fees generated by Lean & Green, Levin Energy Partners and/or Miller, Canfield for any particular PACE project are incorporated into the financing of each individual PACE Project and are not the County’s legal responsibility.

Under Michigan’s PACE Act, a county must approve several steps to create a PACE District. First, it must approve a Resolution of Intent to create the District. This Resolution must contain a number of items, including, a finding that financing energy projects is a valid public purpose, a description of the proposed arrangement to finance the program, including the use of special assessments on the eligible property, the types of energy projects that may be financed under the PACE Act, reference to a report on the proposed Program and where the report is available for viewing and the time and place for a public hearing on the proposed Program. This is the Resolution which is presently before the Ways & Means Committee tonight.

Holding the public hearing is the second step in the process. The Board is being asked to schedule a public hearing on this program for January \_\_, 2014.

Once the Resolution of Intent has been approved and a public hearing held, the final step is to approve the Resolution establishing the PACE Program and District and setting forth its terms and conditions. It is anticipated that this Resolution will come before the Ways & Means Committee and full Board sometime in January, 2014.

### **DISCUSSION:**

Establishing a PACE Program with the entire County as a PACE District would provide a valuable option for eligible property owners to obtain the necessary financing for energy projects on their properties. It should be noted that a number of local governmental entities within Michigan, including Ingham, Huron, Macomb, and Wayne Counties have enacted PACE programs with parameters basically identical to those being proposed for the Washtenaw PACE Program.

As noted above, PACE special assessment financing is more advantageous to eligible property owners than traditional financing for energy projects. Since the funding would be treated as a special assessment and would “run with the land” should the property ever be sold, it is perceived as more secure by potential lenders. Moreover, given the relative security of the special assessment mechanism, financing obtained under the PACE Program can be amortized over a longer period of time (10-20 years) as opposed to the much shorter time frame utilized in traditional financing for energy projects.

Finally, it must be stressed that no taxpayer money will be used to establish the PACE Program or District or to administer it once it is created. Under the proposed Washtenaw PACE Program, the County would joint, at no cost, Lean & Green Michigan, a public-private partnership specializing in PACE Programs with Levin Energy Partners, LLC administering the County’s Program. This is the same arrangement that the four other counties currently operating a PACE Program have agreed to use. The law firm of Miller, Canfield will provide legal advice as necessary for individual PACE financing projects once the Washtenaw PACE District is created. Fees for Lean & Green, Levin Energy Partners LLC and Miller, Canfield are included in the administrative costs for individual PACE projects once the District is created; the County is not responsible for any of these fees.

While there are no direct costs to the County to establish and administer the PACE District, there may in some instances, be indirect costs. For example, since the financing under a PACE District is treated as a special assessment, any delinquency in paying off that special assessment would be undertaken by the County Treasurer as a delinquent tax with the Treasurer and her staff putting in time to collect this delinquency for a private lender. This situation is not anticipated to occur with much frequency as most special assessments do not go delinquent. In any event, the positive results of establishing a PACE District and enabling eligible property owners to use PACE special assessment financing far outweighs the occasional delinquency which may occur.

### **IMPACT ON HUMAN RESOURCES:**

The proposed Resolution will have no impact on the County’s human resources.

### **IMPACT ON BUDGET:**

The proposed Resolution will have no impact on the County’s general fund budget.

**IMPACT ON INDIRECT COSTS:**

There are no indirect costs associated with the proposed Resolution.

**IMPACT ON OTHER COUNTY DEPARTMENTS OR AGENCIES:**

Approval of the Resolution will require that the County Treasurer enforce any special assessments which become delinquent.

**CONFORMITY TO COUNTY POLICIES:**

The proposed Resolution conforms to all County Policies.