

FINANCE COMMITTEE AGENDA

Called by: Jaime Salgado, Chairman
Members: Steve Schultz, John
Butitta, Paul Arena, Joe Hoffman,
Jean Crosby, Keith McDonald

DATE: THURSDAY, MAY 27, 2021
TIME: 5:30 PM
LOCATION: BOARD ROOM

The Winnebago County Board Chairman has determined that an in-person meeting is not practicable or prudent because of the COVID-19 pandemic.

AGENDA:

- A. Call to Order
- B. Roll Call
- C. Public Comment – This is the time we invite the public to address the Finance Committee with issues and concerns. We ask you to limit your comments to three minutes. Personal attacks or inappropriate language of any sort will not be tolerated. We will allow a maximum of five speakers on a first come basis with sign up at the meeting. Speakers may not address zoning matters which are pending before the ZBA, the Zoning Committee or the County Board. Personnel matters or pending or threatened litigation may not be addressed in open session. An individual may speak a maximum of three times per calendar year on the same topic. This prohibition shall include the repetition of the same topic in a statement on what is purported to be a different topic. After acknowledgement by the chair, please stand and state your name. Thank you.
- D. Updated Ordinance Establishing a Property Assessed Clean Energy (“PACE”) Program to be laid over
- E. PACE Ordinance Red Lined Version
- F. Other Matters
- G. Adjournment

AN ORDINANCE establishing a Property Assessed Clean Energy (PACE) Program and a PACE Area to finance and/or refinance the acquisition, construction, installation, or modification of energy projects; providing for the issuance of not to exceed \$500,000,000 Taxable PACE Revenue Notes of the County to finance projects pursuant to the County's PACE Program, providing for the payment of said notes, authorizing the sale of said notes to the purchaser thereof; and other matters related thereto

WHEREAS, the County of Winnebago, Illinois (the "*County*"), is a duly organized and existing unit of local government created and existing under the provisions of the laws of the State of Illinois (the "*State*"), and is now operating under the provisions of the Counties Code of the State of Illinois, as amended (the "*Counties Code*"), and is authorized pursuant to the Property Assessed Clean Energy Act of the State of Illinois, as amended (the "*PACE Act*"), to establish a property assessed clean energy program (the "*PACE Program*"), create a PACE area (as defined in the PACE Act) and finance and/or refinance energy projects (as defined in the PACE Act), and may, under the power granted by the Counties Code, as supplemented by the Local Government Debt Reform Act of the State of Illinois, as amended (the "*Debt Reform Act*"), and the other Omnibus Bond Acts, as amended, exercise certain powers and perform certain functions pertaining to its government and affairs, including, but not limited to, the power to make assessments on real property and to incur limited obligation debt secured by such assessments; and

WHEREAS, the PACE Act states that a program such as the PACE Program may be administered by a program administrator (as defined in the PACE Act);

WHEREAS, the County desires to designate The Illinois Energy Conservation Authority NFP ("*IECA*") as program administrator (the "*Program Administrator*") for the PACE Program; and

WHEREAS, the Program Administrator has prepared the report attached hereto as *Exhibit A* (the “*Program Report*”) setting forth certain terms of the proposed PACE Program in conformity with the PACE Act; and

WHEREAS, the County now desires to establish the PACE area as the entire corporate limits of the County described in Exhibit B and to establish the PACE Program as further described herein and in the Program Report and to finance or refinance energy projects; and

WHEREAS, the County Board of the County (the “*Board*”) has not adopted any ordinance, resolution, order or motion which restrict or limit the exercise of its powers pursuant to the Counties Code and Debt Reform Act in the issuance of limited recourse bonds or notes without referendum in furtherance of essential public and governmental purposes or which provides any special rules or procedures for the exercise of such power; and

WHEREAS, pursuant to the PACE Act, in order to provide capital in furtherance of the PACE Program the County may issue bonds or notes pursuant to and in accordance with Section 35 of the PACE Act, secured by payments under one or more Assessment Contracts, or if applicable, municipal bond insurance, letters of credit, or public or private guarantees of sureties or, if applicable, other lawfully available funds of the County including revenues sources or reserves from bond or note proceeds; and

WHEREAS, the Board does hereby determine that it is advisable and in the best interests of the County to establish the Program in and for the County, designate a PACE Area, designate a program administrator, provide for property assessments, authorize the issuance of not to exceed \$500,000,000 Taxable PACE Revenue Notes or Bonds (“*Bond*” or “*Bonds*” are referred to throughout this Ordinance interchangeably as, the “*Note*” or the “*Notes*”) secured by payments under one or more Assessment Contracts, within certain expressed and delegated limitations as hereinafter set forth, and approve certain related matters:

NOW, THEREFORE, Be It Ordained by the County Board of the County of Winnebago, Illinois, as follows:

Section 1. Incorporation of the Recitals. The Board hereby finds that all of the recitals contained in the preambles to this Ordinance are true, correct and complete and are hereby incorporated by reference thereto and are made a part hereof.

Section 2. Public Purpose. The Board hereby finds that the imposition of assessments against qualifying properties on the records of the County to secure the repayment by property owners of Assessment Contracts entered into for the purpose of providing owners of qualifying properties (each an “Owner”) with affordable financing or refinancing for Energy Projects (as defined in the PACE Act) pursuant to the PACE Program further essential public and governmental purposes of the County. The Board further finds it is necessary and in the best interests of the County to provide capital in furtherance of the PACE Program and issue the Notes for such purpose upon the terms provided herein. It is hereby found and determined that such borrowing of money is advisable for the public health, safety, welfare and convenience, is for a proper public purpose or purposes, is in the public interest, and is authorized pursuant to the PACE Act, the Counties Code, and the Debt Reform Act, and these findings and determinations shall be deemed conclusive.

Section 3. Designation of the Program Administrator. The Board hereby designates the Program Administrator as program administrator for the PACE Program on the terms and pursuant to the conditions set forth in an agreement for services between the County and the Program Administrator. In order to facilitate and finance the PACE Program, the Board hereby approves the execution and delivery of a Program Development and Administrative Services Agreement, in substantially the form attached hereto as *Exhibit B*. The Program Administrator shall also assist

the County in determining the terms of sale of any Notes, which may be sold to one or more capital providers (each a “*Purchaser*”).

Section 4. Report of the Program Administrator; Creation of PACE Area. The Board hereby finds as follows:

(a) The financing and/or refinancing of energy projects is a valid public purpose and serves an essential governmental function;

(b) The County intends to facilitate access to capital from the Program Administrator approved by the County or as otherwise permitted by the PACE Act, to provide funds for energy projects which will be repaid by assessments on the property (as defined in the PACE Act) benefitted with the agreement of the record owners (as defined in the PACE Act) of such property;

(c) A description of the territory within the PACE area, the types of energy projects that may be financed and/or refinanced, and the description of the proposed arrangements for financing the PACE Program through the issuance of PACE bonds under or in accordance with Section 35 of the PACE Act, which PACE bonds may be purchased by one or more capital providers (as defined in the PACE Act); are all set forth in the Program Report which is attached hereto as *Exhibit A*. The Program Report is hereby incorporated by reference thereto and made a part hereof. The County hereby approves the Program Report and hereby establishes the PACE area as the corporate limits of the County, all as further described in the Program Report. The Program Report shall be made available for public inspection in the office of the County Clerk of the County (the “*County Clerk*”).

Section 5. Note Details and Security. The Board hereby authorizes that there be borrowed for and on behalf of the County the Notes if issued, in one or more series in an aggregate principal amount not to exceed \$500,000,000 for the purposes aforesaid; and that the Notes shall be designated “Taxable PACE Revenue Note, ([Street Address] Project)” with such series or other designation as set forth in the Note Notification (as hereinafter defined). The Notes, if issued, shall be dated the date of issuance as set forth in the Note Notification and shall also bear the date of authentication, shall be in fully registered form, shall be in denominations as described in the Note Notification (but no single Note of a series shall represent installments of principal maturing on more than one date), and shall bear such further identifying information set forth in the Note. The

Notes shall be in substantially the form attached hereto as *Exhibit C*, with such changes therein as such officials executing thereof shall approve, their execution to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form before the Board, and such form and the terms contained therein are hereby approved by the Board.

Each Note, if issued, shall be secured solely by payments received by the County under and pursuant to the terms of a related Assessment Contract. The County shall make principal payments on the Note, together with applicable interest, fees, penalties, indemnities and other amounts payable to the Registered Owner under the pledged Assessment Contract, in the amounts and on the dates set forth in the Note Notification. Such County payments shall be made solely from the revenues received by the County under the related Assessment Contract, excluding (i) amounts collected from direct or indirect indemnification rights for the benefit of the County or other persons under the pledged Assessment Contract or any related document, (ii) any administrative fees and expenses to the extent payable to or on behalf of the County or its agent and (iii) 80% of the sums received by the County from the collection of penalties and statutory interest on delinquent payments under such Assessment Contract, which shall be retained by the County as collections fees (the “*Pledged Revenues*”).

Payments due on each Note shall be paid by or at the direction of the note registrar and paying agent (which shall be the Treasurer of the County (the “*Treasurer*”), the Registered Owner, the Program Administrator or a bank or trust company authorized to do business in the State of Illinois) as set forth in the Note Notification (the “*Note Registrar*”), to the person in whose name such Note is registered (the “*Registered Owner*”) at the close of business on the 15th day preceding any regular or other payment date on the Notes (the “*Record Date*”), in the manner provided in writing by the Registered Owner to the Note Registrar.

Section 6. Execution; Authentication. The Notes shall be executed on behalf of the County by the manual or duly authorized facsimile signature of the President of the Board and attested by the manual or duly authorized facsimile signature of the County Clerk. In case any such officer whose signature shall appear on any Note shall cease to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All Notes shall have thereon a certificate of authentication, substantially in the form hereinafter set forth, duly executed by the Note Registrar as authenticating agent of the County and showing the date of authentication. No Note shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Note Registrar by manual signature, and such certificate of authentication upon any such Note shall be conclusive evidence that such Note has been authenticated and delivered under this Ordinance. The certificate of authentication on any Note shall be deemed to have been executed by it if signed by an authorized officer of the Note Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Notes issued hereunder.

Section 7. Registration of Notes; Persons Treated as Registered Owners. The County shall cause books (the “*Note Register*”) for the registration and for the transfer of the Notes as provided in this Ordinance to be kept at the principal office of the Program Administrator or the Note Registrar (the “*Principal Office*”), as set forth in the Note Notification. The County is authorized to prepare, and the Note Registrar shall keep custody of, multiple Note blanks executed by the County for use in the transfer and exchange of Notes.

Any Note may be transferred or exchanged, but only in the manner, subject to the limitations, and upon payment of the charges as set forth in the Note and accompanying Form of Assignment. The Note Registrar shall not be required to transfer or exchange any Note during the

period beginning at the close of business on the 15th day of the month next preceding any payment date on such Note and ending at the opening of business on such payment date, nor to transfer or exchange any Note after notice of prepayment has been received by the Program Administrator.

The execution by the County of any fully registered Note shall constitute full and due authorization of such Note, and the Note Registrar shall thereby be authorized to authenticate, date and deliver such Note; *provided, however*, that the principal amount of outstanding Notes of each series and maturity authenticated by the Note Registrar shall not exceed the authorized principal amount of Notes for such series and maturity less previous retirements.

The Registered Owner shall be deemed and regarded as the absolute owner thereof for all purposes, and payments due on any Note shall be made only to or upon the order of the Registered Owner thereof or its legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 8. Prepayment. The Notes shall be subject to prepayment pursuant to the terms and conditions of the related Assessment Contract. Other than in accordance with the terms and conditions in the Assessment Contract and to the fullest extent permitted by applicable law, the County shall not permit any reduction or deferral in the amount of Pledged Revenues without the written consent of the Registered Owner. The County shall, or shall cause the Program Administrator to, provide a reasonable period of time for the Registered Owner to review and approve any calculations necessary to effect prepayments in accordance with the Assessment Contract. The Program Administrator shall promptly notify the County in writing of the Notes or portions of Notes selected for prepayment and, in the case of any Note selected for partial prepayment, the principal amount thereof to be prepaid.

Section 9. Sale of Notes. Any one of the Authorized Officers is hereby authorized to proceed without any further authorization or direction from the Board, to sell the Notes upon the terms as prescribed in this Ordinance.

The Notes hereby authorized shall be executed as in this Ordinance provided as soon after the delivery of the Note Notification as may be, and, after authentication thereof by the Note Registrar, be delivered to the Purchaser upon receipt of the purchase price therefor.

Upon the sale of a series of the Notes, the Authorized Officers shall prepare a Notification of Sale, which shall include the pertinent details of sale of such series of Notes as provided herein (the "*Note Notification*"). In the Note Notification, the Authorized Officers shall find and determine that such series of Notes have been sold at such price and bear interest at such rates that either the true interest cost (yield) or the net interest rate received upon the sale of such Notes does not exceed the maximum rate otherwise authorized by applicable law. Each Note Notification shall be entered into the records of the County and made available to the Board upon request; but such action shall be for information purposes only, and the Board shall have no right or authority at such time to approve or reject such sale as evidenced in a Note Notification.

Upon the sale of a series of Notes, the Authorized Officers and any other officers of the County, as shall be appropriate, shall be and are hereby authorized and directed to approve or execute, or both, such financing documents related to the sale of the Notes as may be necessary, including, without limitation, any contract for the sale of the Notes between the County and the Purchaser. Prior to the execution and delivery of a Note, the Authorized Officers shall find and determine that, to the best of their knowledge, no person holding any office of the County either by election or appointment, is in any manner financially interested, either directly, in his or her own name, or indirectly, in the name of any other person, association, trust or corporation, in the transactions contemplated herein.

The use by the Purchaser or the County of a term sheet relating to the notes (the “*Term Sheet*”) is hereby ratified, approved and authorized; the execution and delivery of the Term Sheet is hereby authorized; and the Authorized Officers are hereby authorized to take any action as may be required on the part of the County to consummate the transactions contemplated by this Ordinance, the Term Sheet and the Notes.

Section 10. Funds and Accounts.

A. There is hereby created the “PACE Note and Interest Fund” of the County (the “*Note Fund*”), which shall be a separate fund for the payment of the principal of and interest on the Notes. The County shall create a subaccount of the Note Fund for each series of the Notes issued (each a “*Note Fund Subaccount*”). The Pledged Revenues and any other funds lawfully available for the purpose shall be timely deposited upon receipt by the County into a Note Fund Subaccount and used solely and only for the purpose of paying the principal of and interest on the related Notes. Accrued interest, if any, received upon delivery of the Notes, together with the amount of proceeds of the Notes as set forth in a Note Notification, shall be deposited as set forth in a Note Notification and be applied to pay the first interest coming due on such Notes. The County hereby assigns to the Registered Owner of a Note all of its right, title and interest in and to all Pledged Revenues maintained in the related Note Fund Subaccount and agrees to hold such amounts in trust for the benefit of the Registered Owner.

B. The remaining proceeds of the Notes and any premium received on the delivery of the Notes are hereby appropriated to pay the costs of issuance of the Notes, and that portion thereof not needed to pay such costs is hereby ordered to be deposited and held in a separate project fund (each a “*Project Fund*”) specific to and as referenced in the related Assessment Contract to pay costs of the project being financed thereby. It is not currently anticipated that the County will hold

any Project Fund. Proceeds of any Note issued to refund or refinance existing Notes, Assessment Contracts or other obligations shall be deposited as set forth in the related Note Notification.

C. At the time of the issuance of the Notes, the costs of issuance of the Notes may be paid by the Purchaser, the Owner, the Program Administrator or the Note Registrar on behalf of the County.

Section 11. Property Assessments. For the purpose of providing funds required to pay annual amounts due from Owners under the Assessment Contracts, and which amounts may be assigned by the County in furtherance of the PACE Program, there is hereby assessed upon property within the County and subject to an Assessment Contract, in the years for which amounts due under such Assessment Contract are outstanding, a direct annual assessment for that purpose; such assessment shall be in addition to all other assessments and taxes of the County.

Any such assessments are to be collected at the same time and in the same manner as taxes collected under the Illinois Property Tax Code. Alternatively, upon the approval of an Authorized Officer, assessments may be billed and collected by the Program Administrator or by another third party assessment servicer.

The County expressly intends to assign and/or pledge payments to be received from each such Assessment Contract in furtherance of the PACE Program. The County covenants and agrees with the beneficial holders of assessments, including Registered Owners, that so long as such assessments remain outstanding, the County will take no action or fail to take any action which in any way would adversely affect the ability of the County to assess and collect the assessments provided for in this Ordinance. The County and its officers will comply with all present and future applicable laws in order to assure that the assessments may be permitted to be assessed, extended, and collected pursuant to applicable law.

Section 12. Limited Obligation of the County. Any obligation of the County, including the Notes, to provide funds pursuant to an assignment of amounts to be received under an Assessment Contract shall be a special, limited obligation of the County, payable solely from the funds provided in such Assessment Contract and is not a general obligation of the County, and the full faith and credit of the County is not pledged to the payment of any obligation secured by such assigned amounts, including the Notes. The Assessment Contracts and any obligations secured thereby, including the Notes, shall be payable solely and only from payments of assessments on benefitted property within the PACE Area, and if applicable from revenue sources or reserves established in support of such obligations.

Section 13. Covenants of the County. The County shall not amend an Assessment Contract or any related Notes in any manner that is materially adverse to the Registered Owner of a Note without such Registered Owner's prior written consent. The County covenants and agrees with each Registered Owner that so long as any Note remains outstanding, the County will take no action or fail to take any action which in any way would adversely affect the ability of the County to assess and collect the Pledged Revenues. The County and its officers will comply with all present and future applicable laws in order to assure that the Pledged Revenues may be permitted to be assessed, extended, and collected pursuant to applicable law.

Section 14. No Conflicts; Further Acts of the County. It is hereby found that no person holding any office of the County either by election or appointment, is in any manner financially interested, either directly, in his or her own name, or indirectly, in the name of any other person, association, trust or corporation, in the transactions contemplated hereby.

When financing documents are executed and delivered by or on behalf of the County in support of the PACE Program, such financing documents will be binding on the County; from and after the execution and delivery of such financing documents, the officers, employees, and agents

of the County are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such financing documents as executed.

Section 15. Additional Ordinances. The Board may adopt additional ordinances or proceedings supplementing or amending this Ordinance. Such additional ordinances or proceedings shall in all instances become effective immediately without publication or posting or any further act or requirement. This Ordinance, together with such additional ordinances or proceedings, shall constitute complete authority for the County to implement the PACE Program, make the property assessments described herein and issue the Notes, all in accordance with applicable law.

Section 16. No Public Hearing; Program Established. The Board hereby finds that no public hearing shall be required in connection with the adoption or amendment of the PACE Program and hereby establishes the PACE Program in accordance with the Program Report.

Section 17. Assessment Contract. The form of “assessment contract” (as defined in the PACE Act) attached as Exhibit A to the Program Report is hereby approved by the County. Any one of the Chairman of the Board, the County Administrator, the Chief Financial Officer, or their designee (the “*Authorized Officers*”) is hereby authorized to negotiate, execute, and deliver one or more assessment contracts with record owners meeting the requirements set forth in the Program Report (each, an “*Assessment Contract*”) in substantially the form of Exhibit A to the Program Report, with such changes, deletions, and insertions as shall be approved by the Authorized Officer and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of such Assessment Contract, and upon execution to record such Assessment Contract with the Recorder of Deeds of Winnebago County. The execution of such agreements and instruments shall be conclusive evidence of such approval. Prior to execution of any

Assessment Contract, the Authorized Officer shall make the determination set forth in clause (i) below and shall have received evidence of items (ii) through (xi) below, to be documented in a written notification, certified by the property owner, to be filed with the office of the County Clerk:

(i) that the property to be assessed is entirely within the PACE area of the County;

(ii) that there are no delinquent taxes, special assessments or water or sewer charges on the property to be assessed;

(iii) that there are no delinquent assessments on the property under a property assessed clean energy program;

(iv) whether there are any involuntary liens on the property, including, but not limited to, construction or mechanics liens, lis pendens or judgments against the record owner, environmental proceedings, or eminent domain proceedings;

(v) that no notices of default or other evidence of property-based debt delinquency have been recorded and not cured;

(vi) that the record owner is current on all mortgage debt on the property, the record owner has not filed for bankruptcy in the last 2 years, and the property is not an asset in a current bankruptcy proceeding;

(vii) that all work requiring a license under any applicable law to acquire, construct, install, or modify an energy project shall be performed by a licensed contractor that has agreed to adhere to a set of terms and conditions through a process established by the County or the Program Administrator and described in the Program Report;

(viii) the contractor or contractors to be used have signed a written acknowledgement that the County will not authorize final payment to the contractor or contractors until the County has received written confirmation from the record owner that the energy project was properly acquired, constructed, installed or modified and is operating as intended; *provided, however*, that the contractor or contractors retain all legal rights and remedies in the event there is a disagreement with the record owner;

(ix) that the aggregate amount financed or refinanced under one or more assessment contracts does not exceed 25% in relation to the greater of any of the following:

(A) the value of the property as determined by the office of the county assessor; or

(B) the value of the property as determined by an appraisal conducted by a licensed appraiser;

(x) that an evaluation of the existing water or energy use and a modeling of expected monetary savings have been conducted for any proposed energy efficiency improvement (as defined in the PACE Act), renewable energy improvement (as defined in the PACE Act), or water use improvement (as defined in the PACE Act), unless the water use improvement is undertaken to improve water quality in accordance with the procedures set forth in the Program Report; and

(xi) before entering into the Assessment Contract with the County, the record owner shall have provided to the mortgage holders of any existing mortgages encumbering or otherwise securing the property a notice of the record owner's intent to enter into the Assessment Contract with the County, together with the maximum principal amount to be financed or refinanced and the maximum assessment necessary to repay that amount, along with an additional request that the mortgage holders of any existing mortgages consent to the record owner subjecting the property to the PACE Program. Prior to the execution of any Assessment Contract, the County shall have been provided with a copy or other proof of those notices and the written consent of the mortgage holder for the record owner to enter into the Assessment Contract which acknowledges that (a) the existing mortgage or mortgages for which consent was received will be subordinate to the Assessment Contract and the lien created thereby and that the County or, if applicable, its permitted assignee (as defined in the PACE Act) can foreclose the property if the assessments are not paid.

Section 18. Additional Actions. The Authorized Officer is hereby authorized:

(i) to approve the form of Program Handbook of the Program Administrator (as defined in the Program Report) setting forth certain additional requirements, procedures, and descriptions relating to the PACE Program and to negotiate, execute, and deliver such other supporting documents as may be necessary or appropriate to implement the PACE Program;

(ii) in connection with the issuance of PACE bonds by the Illinois Finance Authority, a body politic and corporate duly organized and validly existing under and by virtue of the laws of the State (the “*Authority*”), to finance and/or refinance energy projects in accordance with the PACE Act and pursuant to subsection (d) of Section 825-65 of the Illinois Finance Authority Act of the State of Illinois, as amended, to negotiate, execute, and deliver one or more agreements assigning to the Authority an Assessment Contract securing such PACE bonds; and

(iii) to approve changes, updates, amendments, modifications or supplements to the Program Report to the extent such changes, updates, amendments, modifications or supplements comply with the parameters and requirements set forth in the PACE Act.

Section 19. Enactment. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof. All ordinances, orders and resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed, and this Ordinance shall take effect and be in full force immediately upon its adoption.

Section 20. Severability. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 21. Repealer and Effective Date. All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed and this Ordinance shall be in full force and effect forthwith upon its adoption.

This Ordinance shall become effective upon its passage and approval.

PASSED by the County Board of The County of Winnebago, Illinois, this 27th day of May, 2021.

Chairman of the County Board, The County of
Winnebago County, Illinois

ATTEST:

County Clerk, The County of Winnebago,
Illinois

EXHIBIT A

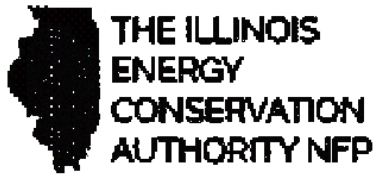
REPORT OF PROGRAM ADMINISTRATOR



THE ILLINOIS
ENERGY
CONSERVATION
AUTHORITY NFP

The County of Winnebago Program Report

Insert County
Logo Here



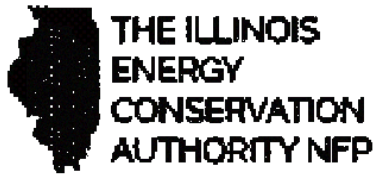
The County of Winnebago Program Report

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- (6) An explanation of the process for billing and collecting assessments...**Page 11**
- (7) A plan to finance the PACE Program pursuant to the issuance of PACE bonds under or in accordance with Section 35 of the PACE Act ...**Page 11**
- (8) Information regarding all of the following, to the extent known, or procedures to determine the following in the future.
 - a. Any revenue source or reserve fund or funds to be used as security for PACE bonds described in item seven of the Program Report
 - b. Any application, administration, or other program fees to be charged to Record Owners participating in the program that will be used to finance and reimburse all or a portion of costs incurred by the Governmental Unit as a result of its PACE Program. **Page 11**
- (9) A requirement that the term of an assessment not exceed the useful life of the energy project financed or refinanced under an assessment contract; provided that an assessment contract financing or refinancing multiple energy projects with varying lengths of useful life may have a term that is calculated in accordance with the principles established by the program report.
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- (10) A requirement for an appropriate ratio of the amount of the assessment to the greater of any of the following:
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Program REPORT for Winnebago County

The County of Winnebago, Illinois (the “County”) is establishing a property assessed clean energy (“PACE”) program (the “PACE Program”) in which certain commercial property owners (“Record Owners”) can improve their properties by completing Energy Projects, as defined in the Property Assessed Clean Energy Act, 50 ILCS 50/1 et. Seq. (the “PACE Act”). As a result of the PACE Program, Record Owners can receive funding for their respective Energy Projects from qualified Capital Providers (as defined in the PACE Act). In accordance with the PACE Act, the governing body of the County must adopt a resolution or ordinance that meets the requirements of Section 15 of the PACE Act in order to establish the PACE Program, and the resolution or ordinance must contain a reference to the Report described in Section 20 of the PACE Act that details the items required to create and structure the PACE Program. Below are the criteria the Report will need to address to establish the PACE Program.

(1) A form of assessment contract between the Governmental Unit and Record Owner governing the terms and conditions of financing and assessment under the program; See Exhibit A

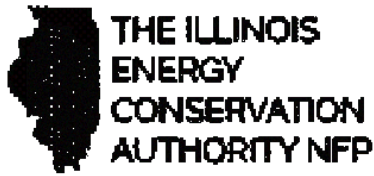
(2) Identification of one or more officials authorized to enter into an assessment contract on behalf of the Governmental Unit;

Winnebago County will oversee the PACE Program but will delegate daily program administration and initial program set-up of the PACE Program. Through a procurement process, the County has selected The Illinois Energy Conservation Authority NFP (“IECA”) to be its program administrator (the “Program Administrator”) for the PACE Program. The County will form an Oversight Committee of individuals to be the point of contact with the IECA on matters related to the PACE Program and to give authorizations as necessary for the continued operation of the PACE Program in accordance with program guidelines that the Oversight Committee approves (the “Program Guidelines”). Per the resolution or ordinance establishing the PACE Program, the Oversight Committee can issue required authorizations and amendments to the Program Guidelines on behalf of the County.

Program Administrator shall prepare and maintain Program Guidelines, which are the set of guidelines, procedures and descriptions required to implement the PACE Program and for program participants to follow in order to qualify a PACE Project for PACE Financing. The Oversight Committee shall review and approve the Program Guidelines.

The Oversight Committee will delegate all Program Administrator duties and tasks to the IECA. The Oversight Committee will be 1) updated with reports from the Program Administrator as often as requested; 2) approve changes to the Program Guidelines and 3) be the liaison for the IECA to interact with the County as part of the administration of the PACE Program.

The Oversight Committee will delegate to the IECA the Program Administrator duties which include:



- Develop the Program Guidelines
- Approve, document, and execute PACE transactions
- Close PACE transactions
- Operate Website for access to the PACE Program
- Be available to help with issues among Capital Providers, Record Owners, and contractors
- Screen and approve Capital Providers and Registered Contractors
- Reconcile accounts associated with the accounting of the PACE Program and payments

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(4) An application process and eligibility requirements for financing or refinancing energy projects under the PACE Program;

Eligibility Requirements

Eligible Properties

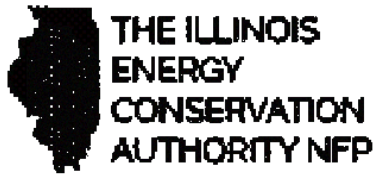
Pursuant to state law, PACE Financing is currently available to Record Owners of any privately-owned commercial, industrial, non-residential agriculture, or multi-family (of 5 or more units) real properties or any property owned by a not-for-profit located within the County, but does not include any real property owned by the County or any other Governmental unit (collectively, “Property”). Examples of qualifying Properties include any office, retail, warehouse, and hospitality located within the PACE Area, as well as not-for-profit community centers and hospitals.

Buildings with multiple Parcel ID/tax keys, such as condominiums, require additional documentation and underwriting protocol. The Assessment Contract will identify each lot, block, tract, and parcel of land against which the PACE Financing will be assessed. The PACE Financing must be tied to a Parcel ID/tax key with sufficient property value to underwrite and justify the Energy Project.

Eligible Energy Projects

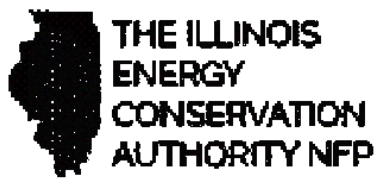
The IECA supports the acquisition, construction, installation, or modification of Alternative Energy Improvements, Energy Efficiency Improvements, Renewable Energy Improvements, Resiliency Improvements, and Water Use Improvements (each as defined in the PACE Act and collectively referred to herein as “Energy Projects” affixed to Property located within the PACE Area. An eligible Energy Project must meet the following criteria:

- An assessment of the Energy Project will be required to confirm the proposed Energy Project achieves the standards and requirements set forth in the PACE Act and the Program Guidelines.
- The Energy Projects that include Energy Efficiency Improvements, Renewable Energy Improvements or Water Use Improvement, unless the Water Use Improvement is undertaken to improve water quality, will require an assessment of the energy & water usage baseline and



modeling of the monetary savings expected to accrue following installation of these Energy Projects.

- All fixtures, products, systems, equipment, devices, supplies, and materials included in the Energy Project must be affixed to the real property, and the Record Owner must leave the improvements affixed or attached to the property during the term of the Assessment Contract
- New construction Energy Projects are also eligible, subject to certain project verification requirements
- Examples of eligible Energy Projects include but are not limited to the list below:
 - insulation in walls, roofs, floors, foundations
 - heating and cooling distribution systems
 - energy efficient 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 systems that reduce energy consumption
 - automated energy or water control systems
 - high efficiency heating, ventilating, or air-conditioning and distribution systems
 - caulking, weather-stripping, and air sealing
 - lighting fixtures
 - energy controls or recovery systems
 - day lighting systems
 - any other fixture, product, system, equipment, device, or material intended as a utility or other cost-savings measure
 - voltage and optimization measures that optimize the voltage at points on the electric distribution voltage system and thereby reduce electricity consumption by electric customers' end use devices
 - Equipment that generates energy from cellulosic conversion
 - Equipment that generates energy from alternative feedstocks
 - battery or electrochemical storage technology for mobile or stationary storage of renewable energy
 - Wind turbines
 - Solar thermal energy system
 - Geothermal energy systems
 - Photovoltaic cells and panels
 - Biodiesel production equipment
 - Equipment that generates electricity from anaerobic digestion of crops and untreated and unadulterated organic waste biomass
 - hydropower that does not involve new construction or significant expansion of hydropower dams
 - Stormwater mitigation infrastructure
 - Backup power generation equipment



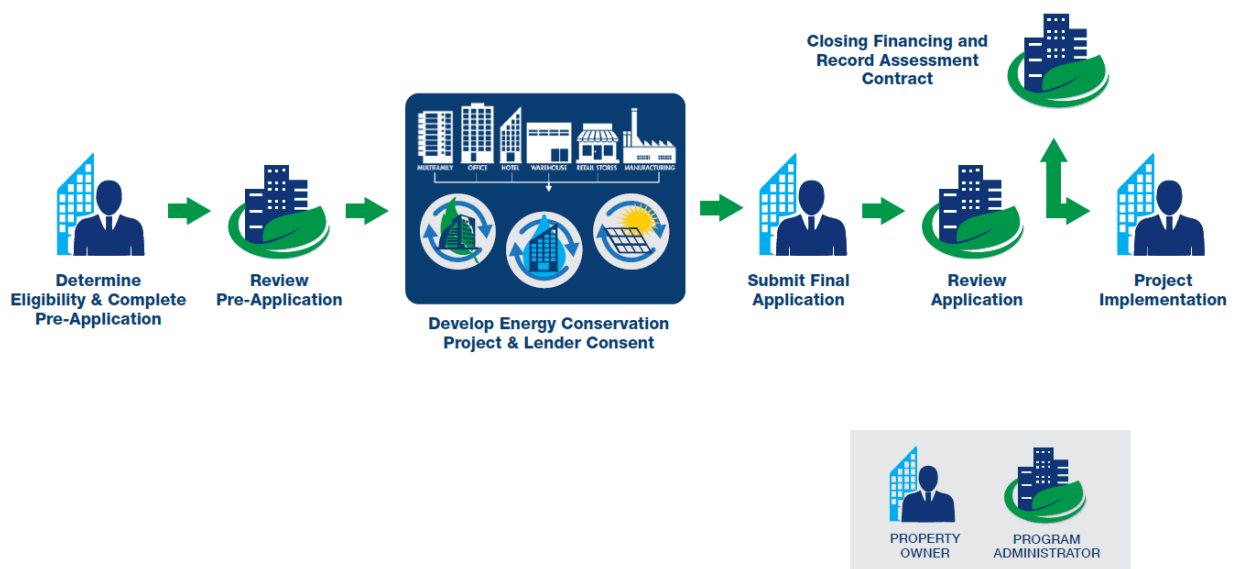
- Storm/wind hardening measures

Energy Project Assessment Requirements

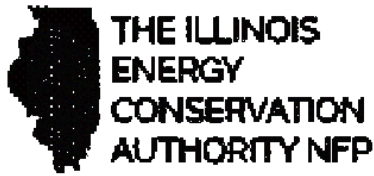
All Energy Projects are required to prepare an assessment of the characteristics and anticipated performance of the proposed Energy Project to confirm the proposed Energy Projects is eligible for PACE Financing through the PACE Program. Energy assessments containing a modeling of the monetary savings will be conducted by a qualified engineer or contractor for Energy Projects that include Energy Efficiency Improvements, Renewable Energy Improvements or Water Use Improvement, unless the Water Use Improvement is undertaken to improve water quality, in accordance to requirements set forth in the Program Guidelines. Energy Projects that include a Resiliency Improvement, an Alternative Energy Improvement and/or a Water Use Improvement to improve water quality shall obtain an assessment of characteristics and validation of the proposed Energy Project prepared by a qualified professional or contractor, in accordance with the Program Guidelines.

PACE Financing Application Process

The Program Administrator will oversee the PACE Financing application process to ensure that PACE Financings comply with eligibility requirements as defined in the PACE Act, enabling resolution or ordinance adopted by the governing body, and Program Guidelines.



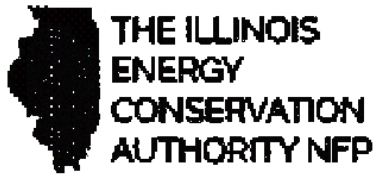
1. Pre-Application. Applicant will use the IECA online portal to obtain an initial determination of eligibility for the property to be improved and if the Applicant meets the qualifications for the PACE Program. Once Applicant has qualified, it shall be referred to as the “Record Owner”. The Pre-Application will determine whether the Property is located within a PACE Area and is an



Eligible Property. Program Administrator will notify Applicant whether the Property and Applicant satisfy the pre-application eligibility requirements. Program Administrator will also notify Record Owner of all PACE Program eligibility requirements that need to be confirmed during the remainder of the application process.

2. Project Development:
 - a. Energy Project assessment - Applicant will select a qualified and approved professional, as defined in the Program Guidelines, who will evaluate the proposed Energy Project and prepare a qualified assessment;
 - b. Project Definition – Applicant will select one or more Contractors and will work with the Energy Project assessment provider and Contractor to select the scope of work that will be included in the Energy Project;
 - c. Capital Provider Selection – Applicant will either choose or request financing quotes from one or more Capital Providers and will select a Capital Provider; and
 - d. Applicant and the selected Capital Provider, and if requested the Program Administrator, will contact all lenders with existing mortgage liens against the Property to request acknowledgment of the Mortgage Lender Consent requirement for PACE Financing.
3. Final Application – Applicant will complete and submit a final application on the IECA online portal by uploading all documents, including those listed below, that are required to support the Final Application. Certain documents may not be available when submitting the Final Application and the Program Administrator may establish satisfactory submission of these documents as conditions to be satisfied prior to closing of the financing.:
 - a. Signed installation contracts for all components of the Energy Project;
 - b. Energy Project assessment by the approved provider who completed the assessment;
 - c. Most recent mortgage loan statement for all outstanding mortgages against the Property;
 - d. Executed Mortgage Lender Consent forms for all lenders of record;
 - e. Current Assessor property tax value or a property appraisal by a licensed appraiser, prepared in accordance with the PACE Act and Program Guidelines. As-complete property appraisal values can be used for new construction properties or properties undergoing significant renovation. ;
 - f. Title Report issued not more than 30 days prior to the closing date;
 - g. Substantially final Assessment Contract; and
 - h. Documentation of sources and uses for PACE Financing and the Energy Project.
4. Financing Approval - Program Administrator will review the Final Application and all supporting documents. The Program Administrator will confirm:
 - a. The Final Application is complete and has been properly executed;
 - b. All required supporting documents have been submitted;
 - c. Property is located in a PACE Area and is an eligible Property;
 - d. Record Owner is the titleholder or owner of the beneficial interest in the Property that qualifies for PACE Financing;

- e. The amount of the PACE Financing is not more than 25 percent of the 1) value of the property as determined by the office of the County Assessor or 2) the value of the property as determined by an appraisal conducted by a licensed appraiser and in accordance with the PACE Act and Program Guidelines,;
 - f. Executed Mortgage Lender Consent forms have been received for all mortgages of record;
 - g. Minimum PACE assessment is initially set at \$50,000 (subject to change). Lower amount on a case by case basis.
 - h. The repayment term of the PACE Financing is not more than the expected useful life of the Project, and if more than one component, then the expected useful life of the component of the Energy Project with the longest expected useful life;
 - i. All submitted Energy Project assessments were completed by an approved professional who holds the applicable professional credentials, as defined in the Program Guidelines.
 - j. All requested uses of funds for the PACE Financing are approved uses of PACE Financing funds;
 - k. There are no delinquent taxes, special assessments, or water or sewer charges on the Property;
 - l. There are no delinquent assessments on the Property under a PACE Program
 - m. The Record Owner has disclosed any and all involuntary liens on the Property, including, but not limited to, construction or mechanics liens, lis pendens or judgments against the Record Owner, environmental proceedings, or eminent domain proceedings;
 - n. There are no notices of default or other evidence of property-based debt delinquency have been recorded against the Property and not cured;
 - o. Record Owner has represented that it is current on all mortgage debt on the Property; and
 - p. Record Owner has represented it (and its owner(s), if applicable) has not filed for bankruptcy in the last 2 years, and the Property is not an asset to a current bankruptcy proceeding.
5. If the Final Application and supporting documents are complete and satisfy all PACE Program requirements, Program Administrator will notify Applicant of Financing Approval. If the Final Application and/or supporting documents are incomplete or demonstrate that the Energy Project and/or Applicant do not meet PACE Program requirements, Program Administrator will promptly notify Applicant of the deficiency and provide Applicant with an opportunity to cure any deficiencies.
6. Close Financing – Upon receipt of notification of Financing Approval from the Program Administrator, Record Owner and Capital Provider will close the financing and execute the Assessment Contract with the Assessment Contract subsequently recorded with the County. At the time of closing, Capital Provider will fund the full financed amount under the Assessment Contract through purchase of the related bond or as consideration for an assignment of the



related Assessment Contract, as applicable. If the Energy Project is not complete at the time of funding, the PACE Financing will fund into an escrow arrangement agreed between Record Owner, Capital Provider and an escrowee.

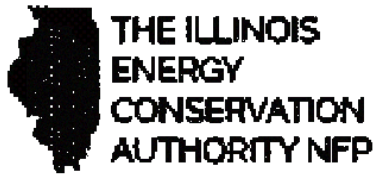
7. Energy Project Implementation –Record Owner notifies Contractor that construction on the Energy Project may begin. Record Owner and Capital Provider will submit to Program Administrator for approval a request to draw PACE Financing proceeds for the Project. Upon approval by the Program Administrator to verify that the request is for pre-approved PACE eligible expenses for the Energy Project, the Record Owner and Capital Provider may proceed to release financing draw funds to Contractor per the terms of the draw schedule agreed to by Record Owner and the Capital Provider. Requests for draws must be accompanied by documentation satisfactory to the Program Administrator and if applicable, completion certificates signed by Contractor and Record Owner. Any change orders during the course of a project may require additional review by the Program Administrator and will be addressed in accordance with requirements in Program Guidelines.
8. Completion – Final payment of the PACE Financing funds cannot be released until the Record Owner and contractor sign a final Completion Certificate and submit it to the Program Administrator on behalf of the Governmental Unit. The Completion Certificate will acknowledge that all contracted work has been completed per the contract. The Completion Certificate will further acknowledge that the Energy Project was properly acquired, constructed, installed, or modified, and is operating as intended. The Completion Certificate will further acknowledge that the County has complied with all requirements of Section 25 of the PACE Act.

(5) A method for determining interest rates on amounts financed or refinanced under assessment contracts, repayment periods, and the maximum amount of an assessment, if any;

The IECA will operate an “Open Market” PACE Program whereby Record Owners have the flexibility to select their preferred Capital Provider for an Energy Project on their eligible Property. The open market model gives Record Owners access to a range of Capital Providers who offer competitive rates and financing terms and conditions. Public funds are not anticipated to be made available for funding Energy Projects, though the County is not prohibited from participating as a Capital Provider. No exclusivity will be provided to Capital Providers, and the Applicants will retain the right to choose the type and provider of financing that works best for their business needs.

Any financing source interested in offering PACE Financing must qualify as a Capital Provider to participate in the PACE Program. The process for becoming a qualified Capital Provider is as follows:

1. The interested Capital Providers must register with the PACE Program and meet the requirements set forth in the Program Guidelines.
2. Upon approval by the Program Administrator and execution of a PACE Capital Provider Agreement, the Capital Provider will be considered a “PACE Capital Provider.” PACE Capital Providers will be listed on the PACE Program’s website. PACE Capital Providers will receive



information from the Program Administrator regarding financing opportunities as well as pertinent developments related to the PACE Program.

3. Applicants may also pre-select their preferred lenders prior to the lender registering with the PACE Program. Prior to the closing of the applicable PACE Financing, however, the lender must become a PACE Capital Provider as outlined above.

The information provided by Capital Providers will be used to link Capital Providers, project developers, energy service companies, installers and contractors, energy auditors, engineering firms, utility companies, Record Owners, and others to develop and fund qualified Energy Projects.

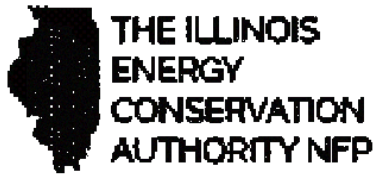
The County reserves the right to rescind the “Capital Provider” status of any lender or Capital Provider according to the terms of the Capital Provider Agreement.

(6) An explanation of how assessments will be made and collected;

The attached Assessment Contract will be the contract between the Record Owner and the County in order to place the PACE assessment on the property. When the PACE transaction closes, the Assessment Contract will be recorded at the County Recorder’s office. The date the PACE assessment will be added to the tax roll will depend on when in the calendar year the PACE transaction closes and the tax season schedules for the County Treasurer’s office. PACE payments will be added to the real estate tax bill for the Property as a special assessment with its own separate line item. Payments will be due when general real estate taxes are due which are approximately [INSERT Tax Due Date 1] and [INSERT Tax Due Date 2] of the calendar year. The bi-annual PACE assessment payments will be equal payments and will be collected by the County Treasurer’s office subject to the same processes and remedies as general real estate taxes. The Program Administrator, in conjunction with the County Treasurer’s office, will reconcile the PACE assessment payment and send the payment to the PACE Capital Provider through the Program Administrator or a Trustee/Paying Agent approximately 30 days from when the County Treasurer’s office receives the payment. Any late fees and default interest, as calculated pursuant to state law, on the PACE assessment portion (not including the ad valorem) will be paid to the Capital Provider.

(7) A plan to finance the PACE Program pursuant to the issuance of PACE bonds under or in accordance with Section 35 of the PACE Act.

Public funds will not be used for the PACE Program unless authorized by the County. The PACE Program will operate as an open market PACE Program so it will be necessary for the PACE Program to have qualified and experienced Capital Providers and a documentation mechanism to fund the PACE Program. The County has options as to the debt instrument and documentation mechanism as it relates to bonds, notes, and or assignments. The County has the option to allow the bonding through a PACE bond conduit or the County can bond itself.



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

(A) Any revenue source or reserve fund or funds to be used as security for PACE bonds described in paragraph (7);

Revenue sources or reserve funds will not be used.

(B) Any application, administration, or other PACE Program fees to be charged to Record Owners participating in the PACE Program that will be used to finance all or a portion of costs incurred by the County as a result of the PACE Program;

The Record Owner will be charged an application fee, cost of issuance fees & closing costs associated with the closing of a PACE transaction, interest on the funds financed by the PACE Capital Provider, and servicing fees for the on-going monitoring and collection of the PACE Assessment. Details of these costs will be in the Program Guidelines.

Application Fee

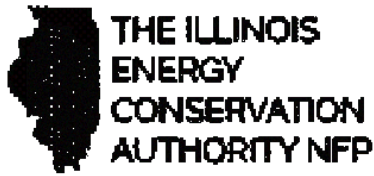
- For the initial application review to check eligibility a nominal application fee will be charged to the Record Owner. The fee that is paid is non-refundable, but will be credited to the Program Fee required at the time of closing.

At Closing/Cost of Issuance

- County Fee – Based on a percentage of the overall PACE Financing amount or a set amount for participation in the PACE Program
- Program Administration Fee – Based on a percentage of the overall PACE Financing amount or a set amount for work associated with the administration of the PACE Program
- Closing Costs - Can include title reports, credit checks, owner's legal, Trustee fees, recording charges, and third-party reports such as the Energy Project assessments, appraisal reports, and environmental reports. Some fees may not apply depending on transaction scope and owner's availability to provide certain due diligence reports
- Closing Cost Bond Counsel – Based on a percentage of the overall PACE Financing amount or a set amount for the closing and issuance of the bond

Elective/Discretionary

- Capital Provider Fee - If applicable, an origination fee charged Record Owner from Capital Provider
- Closing Cost Bond Issuer – If applicable, a fee charged by a bond issuer such as the Illinois Finance Authority for the closing and issuance of the bond
- Debt Service Reserve – If applicable, a reserve required by Capital Provider



- Escrow Fees for the funding of the improvements, if necessary

Servicing (on-going)

- County Treasurer – Based on a percentage of the overall PACE debt service payment or a set amount for the collection and processing of the PACE Assessment from the real estate tax bill
- Program Administration Maintenance Fee - Based on a percentage of the overall PACE debt service payment or a set amount for the collection and processing of the PACE Assessment from the real estate tax bill and for the reporting and payment reconciliation to the County/Trustee.

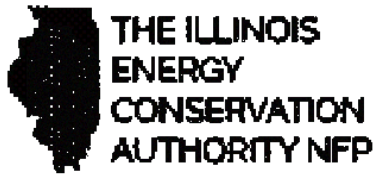
Capital Providers may be charged a fee to participate in the PACE Program.

(9) A requirement that the term of an assessment not exceed the useful life of the energy project financed or refinanced under an assessment contract; provided that an assessment contract financing or refinancing multiple energy projects with varying lengths of useful life may have a terms that is calculated in accordance with the principles established by the program report.;

The repayment term of a PACE Financing shall not exceed the expected life of the proposed Energy Project as described in the Energy assessment. For Energy Projects that include multiple improvements, the term of a PACE Financing may not be greater than the improvement with the longest expected useful life. The measure with the longest expected useful life must be a substantial portion of the Energy Project, subject to the Program Administrator's review and approval. In no case shall the term of an assessment contract exceed 40 years.

(10) A requirement for an appropriate ratio of the amount of the assessment to the greater of the value of the property as determined by the office of the county assessor or the value of the property as determined by an appraisal conducted by a licensed appraiser ;

- Pursuant to the PACE Act, the principal amount of the PACE Financing may not exceed 25 percent of the value of the Property
- Recommend that the PACE Financing plus the outstanding principal on all mortgage liens secured by the property shall not exceed 100% percent of the Property value, unless otherwise approved by the Program Administrator. For example, a commercial building with an assessed or appraised value of \$1,000,000 that requests a \$250,000 PACE Financing must have total outstanding mortgage loan balance(s) as of closing of the PACE Financing that are not greater than \$750,000. *Capital Providers may have additional limits based on their underwriting criteria*



- Pursuant to the PACE Act, property value will be determined by either the assessed value from the county assessor's office or alternatively Record Owners may supply an appraisal prepared by an independent licensed real estate appraisal firm. Record Owners of not-for-profit properties must provide an appraisal, as described above.

(11) A requirement that the Record Owner of Property subject to a mortgage obtain written consent from the mortgage holder before participating in the PACE Program;

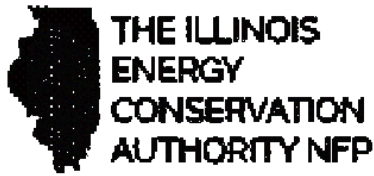
Applicants must provide notice to all existing mortgage lenders of Applicant's intent to enter into a PACE Assessment Contract with the County, which will encumber the Property. Applicant's notice must state the maximum principal amount to be secured by the Assessment Contract, as well as the maximum annual amount to be repaid via the Assessment Contract (assuming there is no default).

Applicant must provide the written consent of the existing mortgage lender(s) of record on the Property prior to Final Application approval by the Program Administrator. The Mortgage Lender Consent must acknowledge the following:

1. The PACE assessment will be part of the general real estate tax bill and therefore the annual payment will have priority to the Mortgage Lender's existing lien.
2. The County, or its assignee, will have the same rights and remedies under the Property Tax Code which could ultimately lead to the foreclosure of the lien on the Property pursuant to tax law if the assessment is not paid. The County is not required to purchase outstanding delinquent PACE liens.
3. The maximum principal amount to be secured by the Assessment Contract.
4. The maximum annual amount to be repaid via the Assessment Contract (assuming there is no default).
5. The levy of the PACE Assessment will not trigger an event of default or the exercise of any remedies under the mortgage loan document or other security agreement held by the lienholder.

The purpose of the Mortgage Lender Consent is to:

- Provide notice to the mortgage holder that the Applicant is proposing the Property participate in the PACE Program, and obtain the mortgage holder's consent to such participation
- Receive confirmation from the Mortgage Lender that the levy of the PACE Financing, pursuant to the Assessment Contract, will not trigger an event of default allowing the Mortgage Lender to exercise any remedies under the mortgage loan documents or other security documents held by the lienholder
- Advise the mortgage holder or lienholder that the PACE Financing will be repaid in Installments collected pursuant to the terms of the Assessment Contract subject to the same penalties, remedies and lien priorities as a special assessment



(12) Provisions for marketing and participant education;

IECA will conduct outreach to organizations that have existing relationships with owners such as IREM, BOMA, ICSC, as well as general business advocacy groups such as the local Chambers of Commerce. Contractors, project developers, and Energy Project assessment firms are also effective channel partners to engage and educate about the PACE Program.

IECA will also develop a website on behalf of the County that will have essential information regarding the PACE Program, benefits, and downloadable marketing materials as well as social media feeds and pages. Separately, there will be a web portal powered by Slipstream (formerly WECC) that will process project applications.

The IECA team has a variety of marketing materials that are ready to be adapted to the County and are tailored to both general audiences and specific stakeholders. The IECA team will provide training and education through in person seminars, workshops, webinars and web-based classes as appropriate.

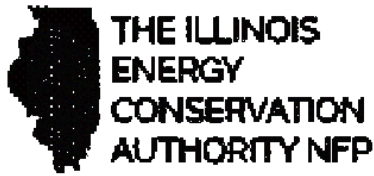
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(14) Quality assurance and antifraud measures.

The Program Administrator will conduct quality assurance for PACE Financings and will enforce antifraud measures in order to ensure that PACE Financings adhere to the requirements stated in the Program Guidelines, as well as requirements enacted by applicable legislation and ordinances. Quality assurance protocols and antifraud measures serve to create safeguards that promote the quality and performance of Energy Projects and the corresponding PACE Financings completed through the PACE Program.

Protocols will assure that buildings improved through the PACE Program meet the property eligibility requirements established in statute and in the Program Guidelines. Measures will also verify that Applicants are eligible Record Owners that are in good standing according to state statute and the Program Guidelines.

Recognizing the public benefit of the clean energy projects, as well as the expected monetary benefits of the Energy Projects that accrue to Record Owners, Program Administrator will apply quality assurance and antifraud measures that promote high quality design and installation of Energy Projects. Quality assurance of Energy Projects will address the Energy Project assessment, the installation contractor and the disbursement of final payments to installation contractors and will be designed to reduce the risk of low-quality installations.



The Program Administrator will qualify Registered Contractors who apply to complete Energy Projects in the PACE Program to ensure they are licensed and meet PACE Program requirements. Additionally, the Program Administrator will qualify and provide oversight of PACE Capital Providers who intend to finance PACE Projects.

The Program Guidelines will define the processes that the Program Administrator will implement to ensure that PACE Financings comply with applicable statutory and PACE Program requirements regarding the terms of PACE Financings, the relationships between the amount of the Financing and the value of the Eligible Property, the appropriate consent of mortgage lienholders subject to a PACE Financing, and other required PACE Program requirements.

The Program Administrator will implement quality assurance and antifraud measures as described in this section; however it is understood that the County intends to implement an open-market PACE Program and that the Record Owner and all providers of goods and services for a PACE Project retain responsibility for operating ethically and assuring the satisfactory implementation of the PACE Project.

The Oversight Committee and Program Administrator may revise and update the quality assurance and antifraud protocols and procedures from time to time.



Exhibit A

Form of Assessment Contract

ASSESSMENT CONTRACT

The County of Winnebago, Illinois	Property Owner:	{PROPERTY OWNER}
	Property:	{PROPERTY ADDRESS 1}
		{PROPERTY ADDRESS 2}
	PIN:	{PIN}
	Financed Amount:	{FINANCED AMOUNT}
	Interest Rate:	{INTEREST RATE}
	Registered Contractor:	{CONTRACTOR}
	Completion Deadline:	{COMPLETION DEADLINE}
Disbursement Agreement	[Yes] / [No]	

This **ASSESSMENT CONTRACT** (this “**Agreement**”), dated as of {EFFECTIVE DATE} (the “**Effective Date**”), is by and between The County of Winnebago, Illinois (the “**County**”) a political subdivision of the State of Illinois, and {PROPERTY OWNER}, a {PROPERTY OWNER DESCRIPTION} (the “**Property Owner**”) the owner(s) of record, of the fee interest in the real property described on Exhibit A (the “**Property**”). The Property Owner completed an application (the “**PACE Application**”) to participate in a property assessed clean energy (“**PACE**”) financing program (the “**Program**”) offered by the County pursuant to the Property Assessed Clean Energy Act. 50 ILCS 50/1 et. seq. (the “**PACE Act**”) and administered by The Illinois Energy Conservation Authority NFP (the “**Administrator**”), in order to finance or refinance certain qualified “energy projects” (as defined in the PACE Act) that benefit the Property, as described on Exhibit A (the “**Improvements**”). The Property Owner will repay the Financed Amount, accrued interest, closing costs, administrative expenses of the County, indemnities, penalties and any other amounts payable under this Agreement through tax assessments levied on the Property from time to time by the County pursuant to the PACE Act (the “**Special Assessments**”). The Property Owner has entered into the Supplemental Commercial PACE Agreement, dated on the date hereof, with {CAPITAL PROVIDER}, a {CAPITAL PROVIDER DESCRIPTION} (the “**Capital Provider**”) in connection with this agreement (the “**CPACE Supplemental Agreement**”). This Agreement establishes the terms of participation in the Program and payment of the Special Assessments.

SPECIAL ASSESSMENTS. The Property Owner agrees that from and after execution of this Agreement, the Property shall be subject to Special Assessments that will be levied by the County from time to time in the amounts necessary to repay all amounts owing under this Agreement until any and all such amounts have been paid in full. The Special Assessments will be a lien against the Property (the “**Lien**”) until such amounts are paid in full. The Lien will be coequal to and independent of the lien for general taxes on the Property. If title to the Property is transferred, the obligation to pay the Special Assessments and the Lien will remain with the Property and will be effective against any future owner of the Property until the Special Assessments have been paid in full.

USE OF FUNDS. The Property Owner will use the financing obtained under this Agreement solely for the purpose of financing the actual costs of materials, labor and fees necessary for installation of the Improvements and entering into this Agreement and the other PACE Documents (as defined below); provided that Property Owner, Capital Provider and Administrator may agree to reasonable changes to the scope of the Improvements, so long as the revised Improvements continue to be qualified energy projects and the Financed Amount is not increased. If such actual costs exceed the Financed Amount, the Property Owner is solely responsible for such excess.

ASSESSMENT PAYMENTS. The installments that the Property Owner is anticipated to pay under the Special Assessments are described on Schedule I (“**Assessment Payments**”). The exact amount of each Assessment Payment (reflecting any adjustments to such amounts related to applicable prepayments, variable interest rates, changes to administrative expenses, indemnities or other unscheduled amounts payable by or credited to

Property Owner pursuant to this Agreement) and due dates will be disclosed in the regular property tax bills from the County along with the Property Owner's other property taxes and must be paid with those property taxes. Assessment Payments are not subject to discount or any other credit for early payment.

INTEREST. Interest will accrue on the outstanding portion of the Financed Amount at the Interest Rate described above on the basis of a 360-day year consisting of 12 months of 30 days each. Interest will begin to accrue on the full amount of the Financed Amount beginning on the Effective Date. Each Assessment Payment will include the full amount of interest scheduled to become due within the corresponding 6-month period of the calendar year in which that Assessment Payment is scheduled (each, an "**Interest Period**"). Early payment will not reduce the amount of interest accrued in any Interest Period. The Financed Amount will include capitalized interest sufficient to pay any interest due in the period from the Effective Date to the first day of the Interest Period covered by the first scheduled Assessment Payment.

ADMINISTRATIVE EXPENSES. In accordance with the PACE Act, each Assessment Payment will include amounts necessary to pay the County's costs to administer the Program ("**Administrative Fees**"). Administrative Fees are anticipated to equal \$300 of each scheduled Assessment Payment, but may increase as required by the County.

PROGRAM REQUIREMENTS. Based solely on the recommendation of the Administrator and the representations of the Property Owner in this Agreement and in the related PACE Application, the County has determined the Property Owner has met all necessary Program requirements to enter into this Agreement.

DISBURSEMENTS. If installation of the Improvements is not complete as of the Effective Date, Property Owner and Capital Provider shall enter into an agreement governing the [escrow and] disbursement of any undisbursed portion of the Financed Amount ("**Disbursement Agreement**"). Otherwise, relevant portions of the Financed Amount will be disbursed to or at the direction of the Property Owner. The terms of any Disbursement Agreement shall be consistent with the requirements of the program guidelines for the Program (the "**Program Guidelines**"). In connection with disbursements, the Property Owner and Capital Provider shall provide Administrator with information required to confirm the installation of the Improvements in accordance with the Program Guidelines. Capital Provider and Property Owner shall conduct their own review of each draw request to determine the suitability of the PACE Project and its compliance with the PACE Act and the Program Guidelines. As required by the PACE Act, the Property Owner and the Contractor shall deliver a completion certificate ("**Completion Certificate**") stating that the work on the Improvements has been completed in a satisfactory manner and the Improvements have been properly acquired, constructed, installed, and operating as intended to the Capital Provider and Administrator prior to the final disbursement of the Financed Amount. Each Disbursement Agreement shall provide that any portion of the Financed Amount remaining undisbursed by the earlier of the Completion Deadline (as extended by agreement of Capital Provider, Administrator and Property Owner) and the delivery of the Completion Certificate shall be used to repay the Financed Amount.

PREPAYMENT. The outstanding Financed Amount may be prepaid in whole or in part upon no less than 45 days written request to the Administrator at any time. Prepayments will be applied at the end of the month in which funds are received. Upon receipt of the request for prepayment, the Administrator will provide a payoff statement and payment instructions, which shall be binding without apparent errors. The amount of any prepayment will include a rebate of unearned interest, if applicable, a prepayment premium equal to the amount set forth on **Exhibit A** attached hereto and an administrative fee of \$350. Following a partial prepayment, you may either continue to owe Assessment Payments in the same amount as prior to such prepayment but decrease the total number of scheduled Assessment Payments or, upon request, revise the schedule of Assessment Payments in a manner that results in smaller scheduled Assessment Payments that amortize the remaining Financed Amount after the application of the prepayment over the original term. Following any prepayment, Capital Provider will deliver a revised **Schedule I** to Property Owner, which, upon approval by Administrator, shall replace Schedule I from the date of the prepayment without further act. Due to circumstances outside of the Program's control, certain prepayments (including those applied after February 15 of any calendar year) may result in the Property Owner receiving a tax bill that does not reflect that prepayment. In these circumstances, the Property Owner must pay the full tax bill, and the Administrator will refund overpayments to the Property Owner when received from the County.

LATE PAYMENT. Under Illinois law, if the Property Owner fails to pay any Assessment Payment on a timely basis, such delinquent Assessment Payments will be subject to the same penalties as other delinquent property taxes, which initially incur a penalty of 1.5% per month and continue to incur increasingly steep penalties mandated by statute if such taxes remain unpaid, including loss of title to the Property. The Property Owner will be responsible for any fees, default interest or other charges related to a delinquent Assessment Payment and such amounts shall become part of the Special Assessments levied under this Agreement.

FORECLOSURE. The Property Owner acknowledges and agrees that upon failure to pay any Assessment Payment, the County has the right to enforce collection of delinquent Assessment Payments, associated penalties and all costs of suit (including attorneys' fees) by all lawful means, including through a tax certificate sale or an issuance of a tax deed or other process that could result in Property Owner losing title to the Property. The Property Owner acknowledges that the County has the right to obligate itself, on behalf of the County Parties (as defined below), to exercise such rights and remedies with respect to enforcement of delinquent Special Assessments to the extent permitted by applicable law.

NO ACCELERATION; NO REDUCTION OR OFFSET; SURVIVAL. Except as provided below with respect to Eminent Domain, the outstanding portion of Financed Amount and scheduled Assessment Payments related thereto will not accelerate upon a default or late payment or enforcement of remedies by the County under this Agreement. The Special Assessments, the Lien and the obligation to pay subsequent Assessment Payments when they become due shall survive any such event and continue until paid in full. The Property Owner acknowledges and agrees that the Special Assessments will not be subject to reduction, offset or credit of any kind for any reason, including the Improvements' failure to perform as expected.

ANTIDEFICIENCY. Without limiting any rights or obligations agreed by the Property Owner and Capital Provider under the CPACE Supplemental Agreement, Property Owner will not be personally liable under this Agreement for any delinquent amount of a Special Assessment that remains outstanding after the completion of the exercise of applicable remedies by the County in respect of such amount (including a tax sale of the Property), except for indemnification rights arising from an event of fraud, willful misconduct or reckless disregard by Property Owner (which the County or other indemnitee may pursue from Property Owner under any available method permitted by law).

NO WARRANTIES; LIMITATION OF LIABILITY. NEITHER THE COUNTY NOR THE ADMINISTRATOR MAKES ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE IMPROVEMENTS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED.

PROPERTY OWNER REPRESENTATIONS AND WARRANTIES. The Property Owner represents and warrants: (A) the Property Owner is duly organized, validly existing and in good standing in the state of its organization and has authority to do business under the laws of the State of Illinois; (B) the Property Owner has all necessary power and authority to own the Property and to enter into and perform the transactions contemplated by this Agreement; (C) there are no actions, suits or proceedings pending, or to the knowledge of the Property Owner threatened, against or affecting it or the Property that could materially adversely affect the Property Owner, the Property or the installation of the Improvements; (D) the Property Owner has good and insurable title to the Property; (E) the Property Owner has complied with, and will continue to comply with, all applicable statutes, regulations and ordinances in connection with the Property and installation of the Improvements; (F) all permits, consents, approvals and authorizations required to be issued by any governmental body necessary for the installation of the Improvements in accordance with the plans and specifications submitted by the Property Owner to the Administrator (the "**Plans**") either (i) have been obtained, are valid, and are in full force and effect; or (ii) will be obtained, will be valid, will be in full force and effect prior to the initiation of installation; (G) the Property Owner has (i) disclosed to the Administrator the identities of all persons, if any, that hold mortgage liens or other special assessment liens against the Property; (ii) at least thirty days prior to the Effective Date, provided notice of the Property Owner's intent to enter this Agreement pursuant to the PACE Act, and (iii) obtained the written consent of the holders of such mortgage liens against the Property acknowledging that upon execution of this Agreement, the Special Assessments (including interest thereon) shall each constitute a legal, valid and binding assessment and a resulting lien upon the Property, equal in priority

with the lien of all state, county, district and municipal taxes and superior in priority to all other liens, titles and claims, until paid; and (iii) to the Property Owner's knowledge, no such consent has been withdrawn or revoked; (H) the information in the PACE Application, including, without limitation, the description of the Improvements provided to the Administrator in connection with in the PACE Application, is true and correct as of the Effective Date, and that the representations in the PACE Application with respect to the Property and the Property Owner are true and correct as of the Effective Date; (I) the Property Owner has thoroughly reviewed any projections of future energy savings, has been provided sufficient time to clarify any questions regarding such projections and understands that the actual energy savings may vary for a variety of reasons; (J) the Property Owner understands that neither the County nor the Administrator makes any assurances as to the quality, safety, efficiency of the Improvements or compliance of the installation of the Improvements with any applicable laws, regulations, codes, standards or requirements; (K) the Property Owner does not and will not engage in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of hazardous materials or hazardous wastes, and the Property has not been previously used for such matters; (L) the Property Owner acknowledges and agrees that the term of the Special Assessments do not exceed the expected useful life of the Improvements; and (M) Property Owner has reviewed the Program Guidelines. These representations and warranties will survive the execution and delivery of this Agreement.

PROPERTY OWNER COVENANTS. The Property Owner covenants and agrees to: (A) at all times, maintain the Property and, after installation, the Improvements; (B) pay all taxes, assessments (including the Special Assessment), and all other charges levied on or against the Property when due; (C) cause its contractor(s) to install the Improvements in accordance with the Plans and in a good and workmanlike manner in accordance with all applicable laws, ordinances, codes, rules and regulations; (D) keep in effect all permits, licenses, and approvals required to own and operate the Improvements; and (E) provide written notice to any subsequent purchaser of the Property that the Property is subject to the Special Assessments and the Lien and to provide any subsequent purchaser a copy of this Agreement.

INSPECTION RIGHTS. The Property Owner grants the County, the Administrator, their respective agents and representatives the right to enter at any reasonable time, upon reasonable notice, to inspect the Improvements. The Property Owner further grants the County, the Administrator, their respective agents and representatives the right to examine and copy any documentation relating to the Improvements.

TERM. Except as otherwise set forth in this Agreement, this Agreement shall expire upon payment in full of the Special Assessments and any other amounts owed by the Property Owner pursuant to this Agreement. Upon receipt of written confirmation from the Capital Provider that such amounts have been paid in full, the County or the Administrator will promptly record a termination of this Agreement.

DIVISION OF PROPERTY. If the property is subdivided before the Special Assessments are paid in full, the outstanding Special Assessments will be allocated among the subdivided parcels in the same proportion used for allocating other property taxes on such parcels, unless otherwise agreed by Administrator, Property Owner and Capital providers.

EMINENT DOMAIN. If the Property or any part thereof is taken by eminent domain or other taking in a manner that would extinguish all or a portion of the Property Owner's (or that of its successor by eminent domain) obligation to make Assessment Payments following such exercise of eminent domain, then Property Owner may be required to pay all or a portion of the outstanding Financed Amount in accordance with the CPACE Supplemental Agreement.

RECORDATION OF DOCUMENTS. The parties acknowledge that this Agreement shall be recorded in the office of the County Recorder on or about the Effective Date.

WAIVERS, ACKNOWLEDGMENT AND AGREEMENT. To the extent permitted by applicable law, the Property Owner expressly waives any right for a public hearing regarding the Special Assessment. The Property Owner also waives any right to repeal or challenge the Special Assessments either by lawsuit or by any other proceeding. The Property Owner acknowledges and agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation and maintenance of

the Improvements. The Property Owner waives any right to recover from and fully releases the County, the Administrator and their successors, assigns and funding sources, and any of their respective officials, employees and agents (the “**County Parties**”) from any claims or liabilities related to, (i) the Property Owner’s participation in the Program, (ii) the Special Assessment, (iii) the Improvements, or (iv) any fact, circumstance or event related to this Agreement, other than claims for, or liabilities not exceeding, Property Owner’s actual damages resulting from such County Party’s willful misconduct or gross negligence and equitable actions to enforce the terms of this Agreement.

INDEMNIFICATION. To the extent permitted by applicable law, the Property Owner agrees to indemnify, defend, protect, and hold harmless the County Parties against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and attorney’s fees) and any demands related to (i) the Property Owner’s participation in the Program, (ii) the Special Assessment, (iii) the Improvements, or (iv) any other fact, circumstance or event related to this Agreement. These indemnification provisions shall survive the termination of this Agreement. Indemnification amounts due under this Agreement may be levied as part of the Special Assessment.

AMENDMENT. Except as expressly provided herein, this Agreement may be modified or amended only by the written agreement of the County and the Property Owner or their respective successors.

SEVERABILITY. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Agreement.

FURTHER ASSURANCES. The Property Owner and the County agree to execute any further documents necessary or appropriate to ensure that this Agreement and the Special Assessments operate as intended.

MISCELLANEOUS. This Agreement shall be governed by the laws of the State of Illinois. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument. This Agreement may be executed by one or more electronic means and each party agrees that an electronic signature is enforceable and effective for all purposes.

THIRD PARTY BENEFICIARY. The parties hereto acknowledge that the Administrator is a third party beneficiary of this Agreement.

PERMITTED ASSIGNMENTS. This Agreement inures to the benefit of and is binding upon the County, the Administrator, the Property Owner and their respective successors and assigns. To the extent permitted by the PACE Act, the County may assign its rights under this Agreement, including all rights to Assessment Payments, to a third party (a “**Permitted Assignee**”) without the consent of the Property Owner. The County intends to delegate certain of its functions under this Agreement to the Administrator. Any Permitted Assignee and the Administrator shall be direct beneficiaries hereof.

EFFECTIVENESS OF AGREEMENT. The effectiveness of this Agreement is subject to the execution of the documents described on Exhibit A (the “**PACE Documents**”) and the satisfaction of any conditions precedent therein.

GOVERNING LAW; VENUE AND JURY WAIVER. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES. IF FOR ANY REASON A DISPUTE UNDER THIS AGREEMENT PROCEEDS IN COURT AS A LAWSUIT, BOTH PARTIES AGREE THAT: (1) ANY SUCH DISPUTE SHALL ONLY BE BROUGHT AS A LAWSUIT IN THE {JUDICIAL CIRCUIT} JUDICIAL CIRCUIT COURT, SITTING IN WINNEBAGO COUNTY, ILLINOIS; (2) BOTH PARTIES IRREVOCABLY CONSENT AND SUBMIT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS; AND (3) BOTH PARTIES WAIVE ANY RIGHT TO TRIAL BY A JURY.

IN WITNESS WHEREOF, the County and the Property Owner have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the Effective Date.

Property Owner:

{PROPERTY OWNER}

By: _____

Name: _____

Title: _____

The County of Winnebago, Illinois

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF PROPERTY, DESCRIPTION OF THE IMPROVEMENTS AND NOTICE INFORMATION

Description of Property:

APN/Parcel ID(s): {PIN}

{PROPERTY DESCRIPTION}

Description of Improvements:

{IMPROVEMENTS}

Notice Information:

If to County:

{COUNTY ADDRESS}

With a copy to:

The Illinois Energy Conservation Authority NFP
2901 Butterfield Road
Oak Brook, IL 60523

If to Property Owner:

{PROPERTY OWNER NOTICE ADDRESS}

PACE Documents:

Assessment Contract, dated as of {EFFECTIVE DATE}, between County and Property Owner

Supplemental Commercial PACE Agreement, dated as of {EFFECTIVE DATE}, between Property Owner and Capital Provider

{DISBURSEMENT AGREEMENT}

Prepayment Premium:

{PREPAYMENT CALC}

SCHEDULE I
SCHEDULE OF ANNUAL ASSESSMENT INSTALLMENTS, INCLUDING PRINCIPAL, INTEREST
AND ANNUAL ASSESSMENT ADMINISTRATIVE FEE

Payment Date	Payment #	Beginning Balance	Interest Payment	Principal Payment	Assessment Payment (P&I)	County Treasurer Fee	Program Maintenance Fee	Total Payment	Ending Balance
	Capitalized Interest								
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EXHIBIT B

FORM OF ADMINISTRATIVE SERVICES AGREEMENT

**PROGRAM DEVELOPMENT AND
ADMINISTRATIVE SERVICES AGREEMENT**

BETWEEN

**THE COUNTY OF WINNEBAGO,
ILLINOIS**

AND

**THE ILLINOIS ENERGY CONSERVATION
AUTHORITY NFP**

Dated as of

_____, 2021

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PROGRAM DEVELOPMENT AND ADMINISTRATIVE SERVICES AGREEMENT

This PROGRAM DEVELOPMENT AND ADMINISTRATIVE SERVICES AGREEMENT (as amended, modified or supplemented from time to time, this "**Agreement**") is entered into as of _____, 20____ (the "**Effective Date**") between The County of Winnebago (the "**County**"), and The Illinois Energy Conservation Authority NFP, an Illinois not for profit corporation ("**IECA**"), as administrator (in such capacity, the "**Administrator**").

RECITALS

A. The County desires to adopt a resolution (the "**Resolution**") authorizing the County to create and administer the _____ (the "**Program**") in compliance with Illinois Public Act 100-0077, the Illinois Property Assessed Clean Energy Act (50 ILCS 50) for the qualification, approval, granting, administration and collection of Program loans;

B. The County wishes to contract with a Person (1) to work with the County to develop the Program terms and documents and (2) to act as the program administrator for the Program (the period during which the program terms and documents are being developed shall be referred to herein as "**Phase I**", and the period during which the Program shall operate shall be referred to herein as "**Phase 2**");

C. Administrator is a nonprofit corporation formed to act as a program administrator that will contract with various entities with experience in energy efficiency and PACE (as defined below) programs to assist in the offering of program administration services, and its contractors have experience in energy efficiency financing programs; and

D. The County desires to retain the services of IECA to develop the terms and documentation of the Program during Phase I pursuant to the terms set forth herein and act as administrator for the Program as set forth herein in an amended and restated version of this Agreement during Phase 2.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Capitalized terms used and not otherwise defined herein shall have the meaning set forth in Exhibit A.

ARTICLE 1 ADMINISTRATOR SERVICES

1.1 Engagement of Administrator; Term. On the terms and conditions set forth in this Agreement, the County hereby engages Administrator to develop and the PACE Program Manual (and, after approval by the Winnebago County Board, eventually perform) the Services for the Program for Eligible Properties (as defined in Exhibit A). Performance of the Services shall

commence on the Effective Date and shall continue for a period of five (5) calendar years (the "*Term*").

1.2 Acceptance by Administrator. Administrator accepts the engagement referred to in Section 1.1 and agrees to perform the Services for the County.

1.3 Program Administration Services. The "*Administration Services*" shall consist of the Program administration services set forth in Exhibit B. In addition, the Administrator shall maintain complete and adequate books and records of all documents (including any originals thereof) related to the operation of the Program during the Term.

1.4 Supplemental Services. Administrator may perform the "*Supplemental Services*" set forth in Exhibit C. The Administrator may provide the Supplemental Services, Administrator shall submit to the County, draft Program documentation to describe the Supplemental Service and any supplemental fee to be paid to the Administrator therefor (the "*Supplemental Documentation*"). If the County accepts the proposed Supplemental Documentation and notifies the Administrator of its acceptance of the Administrator's provision of the Supplemental Service(s) in writing, then the Supplemental Documentation shall become part of the Program Documents and the Administrator may charge for such Supplemental Service(s).

1.5 The Services. The Administration Services, any Supplemental Services approved pursuant to Section 1.4 and any Non-Agreed Services under Section 1.6, performed by the Administrator under this Agreement shall together be the "*Services*".

1.6 Acknowledgment of Program Development and Set-up Services. The County acknowledges that Administrator has heretofore performed certain Program development and set-up services and expended considerable resources for which Administrator is not seeking direct cost recovery.

1.7 Standard of Performance. (a) The Administrator shall perform the Services in material compliance with the standards of care and performance set forth in this Section 1.7. The Administrator shall perform the Services in accordance with the terms of this Agreement, the terms and requirements of the Program Documents and Applicable Laws and consistent with professional standards for services of this kind. The parties hereto agree that in connection with the specification of the Services to be performed during Phase 2, the parties will negotiate additional protective language consistent with agreements for services.

(b) The Administrator may engage Subcontractors as reasonably believed by the Administrator to be necessary or desirable to perform the Services; provided that (i) the fees of such Subcontractors shall be paid by the Administrator; and (ii) the Administrator shall at all times be responsible for the performance of all Services, whether performed by Administrator or its Subcontractor. With respect to the selection of any Subcontractor for the performance of any of the Services, the Administrator shall exercise reasonable care to select reasonably well-qualified Subcontractors based on their experience, availability, reputation and creditworthiness and shall supervise and monitor such Subcontractors' performance of such delegated activity or duty in accordance with the terms of this Agreement and Applicable Laws.

(c) The Administrator agrees to comply in all material respects with all applicable Illinois and federal laws in the performance of its duties under this Agreement.

1.8 Audit. The Administrator agrees that the County shall have the right to conduct an audit of the Administrator's books and records maintained related to the Program reflecting the financial, compliance and performance information of the Program, provided that the County shall be responsible for all costs related to engaging any outside auditors, and shall be limited to conducting only one (1) audit per calendar year. The County shall provide the Administrator with no less than five (5) Business Days' advance written notice. Such audit shall be conducted at the expense of the County, during the Administrator's normal business hours, and so as to minimize the disruption of the Administrator's business, including the operation of the Program. The County agrees to provide the Administrator with a draft report of the findings from the audit at least ten (10) Business Days prior to its planned release or publication in order to provide the Administrator with the right to respond to any findings therein.

1.9 Insurance. The Administrator shall maintain, at all times, during the Term the following insurance, and shall deliver ACORD certificates to the County evidencing the same is in force.

(a) Commercial General Liability insurance with a minimum coverage of \$2,000,000 per occurrence, \$2,000,000 aggregate;

(b) Employer's Liability insurance with a minimum coverage of \$1,000,000 per occurrence, and \$1,000,000 in the aggregate;

(c) Automobile Liability insurance with a minimum coverage of \$1,000,000;

(d) Professional Errors and Omissions insurance with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(e) Personal and Advertising Injury insurance with a minimum coverage of \$1,000,000 per occurrence and \$1,000,000 in the aggregate;

(f) Medical expense insurance with a minimum coverage of \$5,000 per employee;

(g) Umbrella insurance with a minimum coverage of \$1,000,000 (including retention for self-insured hazards in an amount of \$1,000,000); and

(h) Workers' Compensation and Employer's Liability insurance in the event the Administrator has any employees.

1.10 Exclusions. Nothing in the Agreement, including Exhibit B or Exhibit C, will imply any duty of the Administrator under any circumstances to expend its own funds in payment of the County's expenses, except as expressly provided herein.

ARTICLE 2 COUNTY OBLIGATIONS.

2.1 County Obligations. The County shall perform the following obligations:

(a) **Duty to Cooperate.** The County shall cooperate in good faith with the Administrator in taking all actions reasonably requested by the Administrator and providing any documentation as required in connection with the Administrator's performance of the Services and its other obligations hereunder by, without limitation, supporting the Administrator's efforts to develop the Program Manual and the other Program Documents.

(b) **Agreement to Negotiate.** The County agrees to negotiate in good faith the terms of the duties of the Administrator with respect to the Program within the initial Term.

2.2 Exclusivity. The County shall not contract with any third party to perform the Services, including any Supplemental Services, or to operate the Program during the Term, without the Administrator's express written consent.

ARTICLE 3 ADMINISTRATION FEES

3.1 Administration Fees. The Administrator shall be compensated for its performance of the Administration Services by collecting and retaining the fees and charges from applicants and owners of Eligible Properties with a completed Project thereon including the following (collectively, the "*Administration Fees*"). The parties hereto agree that the fees to be paid the Administrator, including for any supplemental services provided by the Administrator for services requested by the County after the date hereof, shall be negotiated by the parties.

ARTICLE 4 TERMINATION

4.1 Administrator Events of Default.

(a) The County may terminate this Agreement immediately upon written notice to the Administrator in the event of any of the following events of default by the Administrator:

(i) an Insolvency Event occurs with respect to the Administrator and remains undismissed or unstayed for a period of sixty (60) days; or

(ii) the Administrator violates in any material respect any of the provisions of this Agreement, which violation remains uncured for thirty (30) days following the Administrator's receipt of written notice thereof from the County; provided that, if such violation is capable of cure and the Administrator is diligently attempting to cure such violation, the Administrator's opportunity to cure shall be extended for so long as is reasonably necessary to cure such violation (not to exceed one hundred eighty (180) days after the original notice from the County); or

(iii) a representation made by the Administrator in or pursuant to this Agreement is proven to have been false or misleading in any material respect as of the date on which it was made and (A) has not been cured within thirty (30) days following the Administrator's receipt of written notice thereof from the County or (B) is not capable of being cured; or

(iv) the Administrator assigns or transfers this Agreement or any right or interest herein except in accordance with Section 9.4; or

(v) the Administrator engages in any act of bad faith, fraud, gross negligence or willful misconduct with regard to, or in the performance of its obligations under, this Agreement.

(b) **County Remedies.** The County shall promptly (no later than thirty (30) days) notify the Administrator in writing upon the occurrence of any of the events set forth in Section 4.1(a). Upon termination of this Agreement for any of the reasons set forth in Section 4.1(a): (i) the County may instruct the Administrator to immediately discontinue the Services, (ii) the Administrator shall be entitled to all undisputed amounts due to the Administrator under this Agreement and not yet paid as of the date of termination (whether or not invoiced) and (iii) the Administrator shall pay the County for any amounts due to the County under this Agreement and not yet paid as of the date of termination (whether or not invoiced). Other than the remedies described in this Section 4.1(b) and the Administrator's obligations under Section 4.5, the Administrator shall have no other or further liability to the County resulting from termination of this Agreement pursuant to this Section 4.1.

4.2 County Events of Default.

(a) The Administrator may terminate this Agreement immediately upon written notice to the County in the event of any of the following events of default by the County:

(i) The County violates in any material respect any of the provisions of this Agreement not otherwise set forth in this Section 4.2(a), which violation remains uncured for thirty (30) days following the County's receipt of written notice thereof from the Administrator; provided that, if such violation is capable of cure and the County is diligently attempting to cure such violation, the County's opportunity to cure shall be extended for so long as is reasonably necessary to cure such violation (not to exceed one hundred eighty (180) days after the original notice from the Administrator); or

(ii) a representation made by the County in or pursuant to this Agreement is proven to have been false or misleading in any material respect as of the date on which it was made and (A) has not been cured within thirty (30) days following the County's receipt of written notice thereof from the Administrator or (B) is not capable of being cured; or

(iii) The County assigns or transfers this Agreement or any right or interest herein except in accordance with Section 9.4.

(b) **Administrator Remedies.** The Administrator shall promptly notify the County in writing upon the occurrence of any of the events set forth in Section 4.2(a). Upon termination of this Agreement for any of the reasons set forth in this Section 4.2, (i) the Administrator may immediately discontinue the Services, (ii) the Administrator shall be entitled to all undisputed amounts due to the Administrator under this Agreement and not yet paid as of the date of termination (whether or not invoiced) and the County shall pay, or cause to be paid, any fees or expenses associated with the cessation of services and the performance of the Administrator's obligations under Section 4.5 and (iii) the Administrator shall pay the County for any amounts due to the County under this Agreement and not yet paid as of the date of termination (whether or not invoiced).

4.3 Termination for Force Majeure.

Either Party may terminate this Agreement if the other Party (i) gives notice of a Force Majeure Event pursuant to Section 7.1 and (ii) fails to give notice of cessation of the Force Majeure Event pursuant to Section 7.2(ii) within ninety (90) days thereafter.

4.4 Effect of Termination.

(a) **Termination Notice.** A Party terminating this Agreement pursuant to this Article 4 shall deliver to the other Party a written notice of termination to that effect (the "**Termination Notice**"), which shall specify in reasonable detail the circumstances giving rise to the Termination Notice. Except to the extent otherwise provided herein, this Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than the date upon which the applicable Party is entitled to effect such termination as provided above.

(b) **No Prejudice.** Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination. In addition, termination of this Agreement for any reason shall be without prejudice to Administrator's right to receive a proportional amount of the Administration Fees as of the date of termination and without prejudice to any Eligible Participant or other parties to a PACE transaction. The remedies provided for in this Agreement shall be the sole and exclusive remedies for any breach of this Agreement or any indemnification provided for herein, provided that each Party shall be entitled to specifically enforce this Agreement.

4.5 Administrator Obligations after Termination.

(a) **Final Accounting.** Upon termination of this Agreement for any reason, the Administrator shall deliver or cause to be delivered to the County all books, records, contracts, plans, specifications, reports, studies, leases, rent rolls, receipts for deposits, unpaid bills, and other papers, materials, supplies, documents or properties (including information stored in a computer) which are in the Administrator's possession or control and which relate to the Program or the Services.

(b) Consult with the County. For a period of sixty (60) days after termination of this Agreement, the Administrator shall make one representative available to the County and/or a successor administrator for up to twenty-five (25) man-hours, during normal business hours, to consult with and advise the County and/or such successor administrator regarding the performance of the Services pursuant to this Agreement in order to ensure an orderly transition between administrative teams. The Administrator shall be entitled to compensation for such services at its then current hourly rates unless this Agreement is terminated as a result of any default by the Administrator.

4.6 Survival. The provisions of Sections 4.1(b), 4.4, 4.5, 4.6, 9.1, 9.3, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.15, 9.16 and Article 5 and Article 6 shall survive termination of this Agreement.

ARTICLE 5 INDEMNIFICATIONS

5.1 Indemnification. The Administrator shall indemnify and hold harmless the County, its agents, officials, and employees, from and against all injuries, losses, claims, suits, costs and expenses which may accrue against the County as a consequence of entering into this Agreement. The Administrator agrees to save, hold harmless, defend and indemnify the County and its officers, agents, and employees, from any and all liability or loss incurred by the County resulting from the Administrator's noncompliance with any laws or regulations of the County or the State of Illinois and/or the Administrator's violation of any of the terms and conditions of this Agreement, and from the Administrator's gross negligence or willful misconduct arising from, in any manner and in any way connected with, the terms and conditions of this Agreement and arising from the Administrator's performance thereunder, except to the extent that such liability or loss is caused by the gross negligence, fraud or willful misconduct on the part of the County or its officers, agents, and employees. The County, to the extent permitted by law, agrees to save, hold harmless, defend and indemnify the Administrator and its officers, agents, and employees, from any and all liability or loss incurred by the Administrator resulting from the County's noncompliance with any laws or regulations of the County or the State of Illinois and/or the County's violation of any of the terms and conditions of this Agreement, and from the County's gross negligence or willful misconduct arising from, in any manner and in any way connected with, the terms and conditions of this Agreement and arising from the County's performance thereunder, except to the extent that such liability or loss is caused by the gross negligence, fraud or willful misconduct on the part of the Administrator or its officers, agents, and employees.

ARTICLE 6 LIMITATIONS OF LIABILITY

6.1 General Limitation. The Administrator shall only be liable for its express duties hereunder, and the Administrator shall have no implied duties hereunder.

6.2 Damages Limited. Except in the case of fraud, willful misconduct, gross negligence or indemnity claims by an Indemnified Party on account of third party claims against such Indemnified Party, neither Party shall be liable for any consequential, moral (i.e., pain and suffering), exemplary, indirect or incidental losses or damages whatsoever, or for any loss of use,

loss of production, cost of capital, loss of goodwill, loss of opportunity, loss of revenues or profit or the loss of use thereof, or damage to or loss of any property or equipment, whether based in contract, in tort (including negligence and strict liability) or on any other legal or equitable theory. Except as expressly provided in Article 4, Article 5 or this Article 6, neither Party shall be liable for any damages arising out of, or related to, directly or indirectly, this Agreement or the performance, non-performance or breach hereof, whether based in contract, in tort (including negligence and strict liability) or on any other legal or equitable theory.

ARTICLE 7

FORCE MAJEURE EVENTS

7.1 Notice of Force Majeure Event. A Party claiming a Force Majeure Event shall notify the other Party in writing of any delay or anticipated delay in the claiming Party's performance of this Agreement due to such Force Majeure Event, and such notice shall include a description of the event and anticipated length of the delay. The claiming Party shall deliver such notice as soon as practicable.

7.2 Effect of Force Majeure Event. The claiming Party shall be excused from the performance of its obligations under this Agreement to the extent that the claiming Party is prevented from performing such obligations by reason of the occurrence of a Force Majeure Event, provided that (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event, (b) no liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of such occurrence, and (c) the Administrator shall use commercially reasonable efforts to mitigate its costs after receiving notice that the Subcontractors have been affected by Force Majeure. The claiming Party (i) shall exercise commercially reasonable efforts to minimize and mitigate the effects of any Force Majeure Event; and (ii) provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the County. The County hereby represents and warrants as follows on the Effective Date:

(a) The County is duly organized, and validly existing, and in good standing under the laws of the State of Illinois, and has the full power to operate the Program.

(b) The execution, delivery and performance by the County of this Agreement will not violate or conflict with any Applicable Law or any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents.

(c) There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to the County's actual knowledge, threatened against it or involving the Program before any court or arbitrator that individually or in the aggregate could reasonably be expected to result in any materially adverse effect on the business,

properties or assets or the condition, financial or otherwise, of the County or in any material impairment of the County's ability to perform its obligations under this Agreement.

(d) This Agreement has been duly authorized, executed and delivered by or on behalf of the County and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(e) Neither the execution nor delivery by the County of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority that has not been taken as of the Effective Date.

8.2 Representations and Warranties of Administrator. The Administrator hereby represents and warrants as follows on the Effective Date:

(a) The Administrator is duly organized, validly existing, and in good standing under the laws of the State of Illinois, and has full power to engage in the business it presently conducts and contemplates conducting under this Agreement.

(b) The execution, delivery and performance by the Administrator of this Agreement will not violate or conflict with any Applicable Law or any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents.

(c) There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to the Administrator's knowledge, threatened against it before any court or arbitrator or Governmental Authority that individually or in the aggregate could reasonably be expected to result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of the Administrator or in any material impairment of its ability to perform its obligations under this Agreement.

(d) This Agreement has been duly authorized, executed and delivered by or on behalf of the Administrator and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of the Administrator, enforceable against the Administrator in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(e) Neither the execution nor delivery by the Administrator of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority.

(f) The Administrator has adequate resources for the performance of its obligations under this Agreement and has experience in the administration of energy

efficiency and renewable energy financing programs such as the Program and is fully qualified to perform the Services in accordance with the terms of this Agreement.

ARTICLE 9 MISCELLANEOUS

9.1 Governing Law. This Agreement shall be governed by the internal laws of the State of Illinois, excluding any of its conflict of law provisions that would require the application of the laws of another jurisdiction. Subject to the provisions of this Article 2., for purposes of resolving any Dispute arising under or relating to this Agreement, the Parties hereby submit to the non-exclusive jurisdiction of the County of Winnebago, Illinois, Circuit Court or, if such court does not have subject matter jurisdiction, the United States Federal District Court for the Northern District of Illinois. Each Party hereby waives any objection that it may have to the venue of such action, suit or proceeding in such court or that such suit, action or proceeding in such court was brought in an inconvenient court and agrees not to plead or claim the same. Each Party further agrees that such court shall have in personam jurisdiction over each of them with respect to any such dispute, controversy, or proceeding. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BYLAW, ANY AND ALL RIGHTS TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING UNDER THIS AGREEMENT.

9.2 Amendments. No amendment to this Agreement shall be binding on the Parties unless set out in writing and signed by authorized representatives of each of the Parties.

9.3 No Waiver. No provision of, or entitlement under, this Agreement shall be deemed to be waived by either Party unless such waiver is made in writing and identified as such. The failure of either Party to insist, on one or more occasions, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

9.4 Assignment.

(a) Except as set forth in Section 9.4(b), no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which may be withheld in its sole and absolute discretion.

(b) Notwithstanding the foregoing, each Party shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its Affiliates or in connection with a merger or acquisition of substantially all of the assets of a Party and continued validity thereof, provided, however, that (x) the assigning Party is the surviving entity in any such merger, and (y) such an assignment shall not release the assigning party from any of its liabilities or obligations under this Agreement. Any purported assignment of this Agreement in violation of this Section 9.4 shall be null and void.

9.5 [Reserved].

9.6 Illinois Freedom of Information Act. (a) "Public records" are all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body. (5 ILCS 140/2(c)) It is the subject matter of the record, not its form, that determines whether the record is a public record.

(b) The Administrator understands that this Agreement and other materials submitted to the County may constitute public records subject to disclosure under Illinois Freedom of Information Act, 5 ILCS 140, et seq.

9.7 Intellectual Property. The Administrator shall not obtain trademarks, copyrights or other intellectual property rights that contain or are reasonably likely to be confused with the County or any agent, representative or affiliate of the County, including abbreviations thereof and acronyms therefor. The County expressly acknowledges and agrees that any and all computer software and all source code thereof developed by the Administrator ("**Proprietary Software**") in performing the Services, including all intellectual property rights contained therein, is proprietary and property of the Administrator or its licensors.

The Administrator acknowledges and agrees that all intellectual property rights to the names "Winnebago County," or "Winnebago County PACE Program" shall belong to the County. The Administrator shall not market or otherwise hold out the Program under any name other than "Winnebago County PACE Program."¹ The Administrator agrees not to use the name, seal or image of The County of Winnebago in any form of endorsement without the written permission of the County.

9.8 Further Assurances. The Parties will each use its commercially reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver, or cause to be executed and delivered, to the other such assistance, or assignments, consents or other instruments in addition to those required by this Agreement, in form and substance reasonably satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement.

9.9 No Agency. The Parties are independent contractors. Nothing in this Agreement is intended, or shall be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Nothing in this Agreement shall be construed to give either Party any right, power or authority to enter into any agreement or undertaking for, or act as an agent or representative of, or otherwise bind, the other Party, except as expressly set forth herein.

9.10 Notices. Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and: (a) hand-delivered; (b) delivered by a reputable overnight

¹ Need to discuss ownership of data gathered or developed

courier service requiring signature for receipt; (c) mailed by certified or registered air mail, post prepaid, with a return receipt requested; (d) sent by facsimile; or (e) delivered as a .pdf attachment to an e-mail. Any such notice, request, demand or other communication shall be effective on receipt by the addressee; provided that notice via facsimile or other electronic transmission shall be deemed effective upon written acknowledgement of receipt by the addressee. Notices given pursuant to this Section 9.10 shall be addressed as follows to (as the same may be amended from time to time by notice given pursuant to this Section 9.10):

if to the Administrator:

2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Mark Pikus
e-mail: mark.pikus@iecapace.org
Facsimile No.: (630) 218-4900

with a copy to:

The Inland Real Estate Group, LLC
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Janet Heintz
e-mail: jheintz@inlandgroup.com
Facsimile No.: (630) 218-4900

If to the County:

Attention: _____
e-mail: _____
Facsimile No.: (____) _____

9.11 Rules of Interpretation. Unless the context requires otherwise: (i) the singular includes the plural and vice versa, (ii) the word "including" means "including, without limitation", (iii) references to "Articles", "Sections", "Schedules" and "Exhibits" are to articles, sections, schedules and exhibits to this Agreement, (iv) the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (v) references to this Agreement include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time, (vi) references to any other agreement mean such agreement as in effect on the Effective Date, including all schedules and exhibits thereto, as the same may be amended, modified, supplemented or replaced from time to time with any required consent of the County or the Administrator, as applicable, (vii) references to a statute or to a regulation issued by a Governmental Authority are references to the statute or regulation in force as of the Effective Date, together with all amendments and supplements thereto and any statute or regulation substituted for or superseding such statute or regulation in force as of the Effective Date, (viii) "shall" and "will" mean "must" and have equal force and effect and express an obligation, (ix) this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision in this Agreement, (x) the word "or" in this Agreement is disjunctive but not necessarily exclusive, (xi) references in this Agreement to time periods in terms of a certain number of days mean calendar days unless expressly stated herein to be Business Days, and (xii) headings used in this Agreement are for ease of reference only and shall not be taken into account in the interpretation or construction of the provisions of this Agreement.

9.12 Complete Agreement. This Agreement constitutes the complete and entire Agreement between the Parties and supersedes any previous communications, negotiations, representations or agreements, whether oral or in writing, with respect to the subject matter addressed herein. NO PRIOR COURSE OF DEALING BETWEEN THE PARTIES SHALL FORM PART OF, OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF, THIS AGREEMENT.

9.13 Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect (including economic effect).

9.14 Multiple Counterparts. This Agreement and any amendments of this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Executed counterparts of this Agreement may be delivered by facsimile or email, provided that each Party shall promptly thereafter deliver one original signature page to the other Party.

9.15 Third Party Beneficiaries. The provisions of this Agreement are intended for the sole benefit of the County and Administrator and there are no third-party beneficiaries hereof (except as expressly set forth herein).

9.16 Attorney's Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, the prevailing Party shall be entitled to be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with such action or proceeding.

9.17 NON-DISCRIMINATION: The County will not contract with any person or firm that discriminates against employees or applicants for employment because of any factor not related to job performance. The Administrator agrees to comply in all material respects with all federal, state and local laws and policies that are applicable to it that prohibit discrimination in employment contracts. The Administrator agrees to include in each subcontract relating to the Services provisions that prohibit the related subcontractor from discriminating in its employment practices in any way that violates any federal, state and local laws and policies that are applicable to such subcontractor.

9.18 Drug Free Workplace. The Administrator agrees to provide a drug free workplace as provided for in The Drug Free Workplace Act (30 ILCS 480/1 et seq.).

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

COUNTY:

THE COUNTY OF WINNEBAGO

By:_____

Name:_____

Its:_____

ADMINISTRATOR:

THE ILLINOIS ENERGY CONSERVATION
AUTHORITY NFP

By:_____

Name:_____

Its:_____

Exhibit A

Defined Terms

As used in the attached Agreement, the following terms shall have the meanings set forth below:

"Additional Term" has the meaning given in Section 1.1.

"Administration Fees" has the meaning given in Section 3.1.

"Administration Services" has the meaning given in Section 1.3.

"Administrator" has the meaning given in the preamble of this Agreement.

"Affiliate" means, when used with reference to a specified Person, any Person directly or indirectly controlling, controlled by, or under common control with the specified Person; provided, however, that (i) with respect to the Administrator, "Affiliate" shall not include the County and (ii) with respect to the County, "Affiliate" shall not include Administrator.

"Agreement" has the meaning given in the preamble of this Agreement.

"Applicable Law(s)" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, guideline, Governmental Approval or consent or requirement of a Governmental Authority, in each case which is applicable to or binding on such Person.

"Business Day" means a day, other than a Saturday or Sunday or a public holiday, on which banks are generally open for business in Wheaton, Illinois.

"Calendar Quarter" means each January 1 through March 31, each April 1 through June 30, each July 1 through September 30, and each October 1 through December 31.

"County" has the meaning given in the preamble of this Agreement.

"Disclosing Party" has the meaning given in Section ____.

"Dollar" and "\$" means the lawful currency of the United States of America.

"Effective Date" has the meaning given in the preamble of this Agreement.

"Eligible Properties" means commercial, industrial, agricultural and multi-family residential real property of 5 or more units located within the jurisdiction of the County.

"Final Application" means a final application for financing by an Eligible Property Owner under the Program.

***["Financing and Special Charge Agreement"]*² means that certain agreement to be entered into by the County, an Eligible Property owner, and a Qualified Lender setting forth, among other things, the terms of the financing for the Project, the repayment and collection thereof, the levying of the related PACE special charge and the results of non-payment of the PACE financing.]**

"Force Majeure Event" means, when used in connection with the performance of a Party's obligations under this Agreement, any act, condition or event which renders said Party unable to comply totally or partially with its obligations under this Agreement, but only if and to the extent (a) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (b) the Party seeking to have its performance obligation(s) excused thereby has taken reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect thereof on its ability to perform its obligations under this Agreement and such event is an event which, by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome and (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby or its Subcontractors, suppliers, agents or employees. Without limiting the meaning of, but always subject to, the preceding sentence, the following events, while not exhaustive, constitute Force Majeure Events to the extent that they render a Party unable to comply totally or partially with its obligations under this Agreement and otherwise comply with the preceding:

(a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;

(b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, excessive winds, excessive rain, objects striking the earth from space (such as meteorites), drought or any other naturally occurring event or severe weather conditions for the jurisdiction of the Program that impacts the ability of Administrator to perform the Services; and

(c) acts of any Governmental Authority that restrict or limit Administrator's ability to operate the Program, as applicable.

Notwithstanding the foregoing, the following shall not constitute a Force Majeure Event: (A) a Party's financial inability to perform, (B) changes in market conditions that affect the price of, demand for, or supply of, materials, or (C) strikes or labor disputes targeted directly at Administrator or its subcontractors or vendors.

"Governmental Approval" means all permits, licenses, approvals and authorizations of any Governmental Authority.

⁴ Names of Program documents subject to change.

"Governmental Authority" means any national, state, autonomic, regional, province, town, city or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing, but specifically excluding the County.

"Indemnified Parties" has the meaning given in Section 5.1.

"Insolvency Event" with respect to a Person means (i) a proceeding is instituted against such Person seeking to adjudicate such Person as bankrupt or insolvent, (ii) such Person makes a general assignment for the benefit of its creditors, a receiver is appointed on account of the insolvency of such Person, or such Person files a petition seeking to take advantage of any other Applicable Laws relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts, or (iii) such Person generally fails to pay its undisputed debts when due or as they mature.

["Lender Consent Template"³ means that certain Lender Acknowledgement to Contractual PACE Special Charge included as part of the Program Manual.]

"Losses" has the meaning given in Section 5.1.

"PACE" means property assessed clean energy.

"Party" means either the County or Administrator.

"Person" means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

"Phase 1" has the meaning given in the Recitals.

"Phase 2" has the meaning given in the Recitals.

"Program" means the uniform PACE program for Eligible Properties operated by the County pursuant to this Agreement.

"Program Documents" means the Program Manual, [the Lender Consent Template, the Qualified Lender Agreement and the Financing and Special Charge Agreement, [the relevant bond documents]] in each case as the same may be modified or amended pursuant to the written consent or approval of the County.⁴

"Program Manual" means that certain collection of standards, terms, conditions, criteria, and rules relating to the operation of the Program to be developed by the Administrator [with the cooperation of the County] relating to underwriting standards for Projects, determinations of Eligible Properties, determinations of Qualified Lenders, determinations for participating contractors, and other relevant aspects of operating the Program.

³ Names of Program documents subject to change.

⁴ Names of Program documents subject to change.

"Project" means the improvements to real property of an Eligible Property qualified pursuant to the terms of the Statute and the Program Documents.

"Proprietary Software" has the meaning given in Section 9.7.

"Qualified Lender" means a financial institution or other business engaged in the business of financing Projects and that has signed a Qualified Lender Agreement.

["Qualified Lender Agreement"]⁵ means that certain agreement setting forth the terms and conditions for the participation of Qualified Lenders in the Program.]

"Receiving Party" has the meaning given in Section .

"Services" has the meaning given in Section 1.5.

["Services Fees" has the meaning given in Section 3.1]⁶ -

"Statute" means the Illinois Property Assessed Clean Energy Act (50 ILCS 50), as amended.

"Subcontract" means a subcontract under which the Administrator subcontracts any of its obligations under this Agreement to a Subcontractor.

"Subcontractor" means any Person retained by the Administrator to perform any portion of the Services in furtherance of the Administrator's obligations under this Agreement.

["Supplemental Fees" has the meaning given in Section .]⁷

"Supplemental Services" has the meaning given in Section 1.4.

"Term" has the meaning given in Section 1.1.

"Termination Notice" has the meaning given in Section 4.4(a).

⁵ Names of Program documents subject to change.

⁶ Will be the aggregate of all fees.

⁷ To be determined when the Supplemental Services are determined.

Exhibit B

Administration Services

Phase I Services

1. Draft resolutions needed to adopt the Program
2. Draft forms of Program Documents
3. Identify sources of capital
4. Establish program to process applications, provide customer service, and engage contractors
5. Establish parameters for size and scope of projects that will qualify for the Program
6. Establish underwriting criteria
7. Establish procedures for coordination with mortgage lenders/obtaining lender consent
8. Establish scope of energy surveys and audits to be required for each project
9. Establish methods for contractor selection
10. Establish procedures for confirming that improvements have been installed/completed
11. Establish procedures for tracking data regarding the efficacy of the Program
12. Discuss with the County the roles and responsibilities of County staff, the Administrator and the other parties working on the Program
13. Work with the County to develop a website for the Program
14. Develop educational and training materials for those interested in participating in the Program
15. Develop a contractor workforce training and recruitment program (including for women, minorities and the long-term unemployed)
16. Develop an itemized list of the costs of the Program
17. Develop a list of the fees of the Program, including fees paid by the property owner, measurement and verification fees, energy audit fees, early repayment penalties, and closing fees
18. Work with the County to develop the mechanism for the collection and distribution of the amounts to be received pursuant to the Program
19. Establish procedures for reporting to the County staff and/or the County Board regarding the Program

Phase II Services

1. Process applications for the Program.
2. Provide customer service and engagement with contractors
3. Collect data needed to evaluate the efficacy of the Program (quality assurance and program reporting)
4. Market the Program, including using the internet, local media and other means
5. Manage the contractor workforce training and recruitment program
6. Close PACE transactions
7. Service closed PACE transactions (collection and distribution of property owner payments)

Exhibit C
Supplemental Services

Energy Saving Audit reports

EXHIBIT C
FORM OF NOTE

No. _____

THE COUNTY OF WINNEBAGO ILLINOIS
TAXABLE PACE REVENUE NOTE
({PROPERTY ADDRESS 1} PROJECT)

<u>Principal Amount</u>	<u>Date of Issuance</u>	<u>Maturity Date of Assessment Contract</u>	<u>Interest Rate of Assessment Contract</u>
{FINANCED AMOUNT}	{EFFECTIVE DATE}	{MATURITY DATE}	{INTEREST RATE}

Registered Owner: [{CAPITAL PROVIDER}, {CAPITAL PROVIDER DESCRIPTION} (together with its successors and assigns, "**Registered Owner**")

1. PAYMENT OBLIGATIONS

- 1.1 Obligation to Pay Amounts Due Under this Note from Pledged Revenues. The County of Winnebago, Illinois (the "**County**"), a public body municipal and corporate, in consideration of the Registered Owner's funding of the Financed Amount under the Assessment Contract ({PROPERTY ADDRESS 1} PROJECT), dated {EFFECTIVE DATE}, between the County and {PROPERTY OWNER}, {PROPERTY OWNER DESCRIPTION} (together with its successors and assigns, "**Property Owner**") attached hereto as Exhibit A (the "**Assessment Contract**" and, together with this Note, the "**PACE Documents**"), hereby promises to pay, in the amounts and at the times set forth in the Assessment Contract, to the Registered Owner, solely from the assessments and other amounts owed by the Property Owner under the Assessment Contract and assigned to the Registered Owner by the County hereunder, and from any other source identified herein (collectively, the "**Pledged Revenues**"), the principal sum of this Note set forth above, together with interest, fees, penalties, indemnities and other amounts payable on such amounts under the Assessment Contract or pursuant to applicable law, other than (i) amounts collected from direct or indirect indemnification rights for the benefit of the County or any person other than the Registered Owner pursuant to the Assessment Contract or any related document, (ii) amounts identified and assessed as administrative fees and expenses to the extent payable to or on behalf of the County or its agents in accordance with the Assessment Contract and (iii) 80% of the sums received by the County from the collection of penalties and statutory interest on delinquent payments under the Assessment Contract, which shall be retained by the County as collections fees.
- 1.2 Cumulative Obligations. The County's obligation to pay amounts due under this Note from the Pledged Revenues shall be cumulative. For the purposes of this Note, the term "cumulative" shall mean that if any amounts due under this Note are not paid when due, such amounts shall remain due and payable until actually paid and shall be paid by the County as soon as any Pledged Revenues are available to pay such amounts.
- 1.3 Assignment and Pledge. The County hereby grants and assigns the Pledged Revenues to the Registered Owner and to the extent not assigned, conveys and pledges to the Registered Owner a first priority security interest in and to the Pledged Revenues. The County may not issue additional notes payable from the Pledged Revenues or otherwise

assign, pledge, or encumber the Pledged Revenues, without the written consent of the Registered Owner.

- 1.4 Principal Reductions. To the fullest extent permitted by applicable law, the County shall not permit any reduction or deferral in the amount due and owing under the Assessment Contract, without the written consent of the Registered Owner.
- 1.5 Payment Obligations Unconditional. The County's obligation to transfer or cause the transfer of the Pledged Revenues it receives from the Property Owner to the Registered Owner shall be unconditional, and the County shall make or cause such transfers without any deduction for any reason, including any set-off or defense the County may have or assert against the Registered Owner.
- 1.6 Term. All obligations of the County hereunder shall terminate on the date when all amounts due under the Assessment Contract have been received by the Registered Owner as set forth herein. No more than 30 days following receipt of final payment hereunder, Registered Owner shall deliver written confirmation thereof, so that a termination of the Assessment Contract may be recorded as required therein. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by the Registered Owner under or with respect to this Note is or must be rescinded or returned for any reason whatsoever (including, but not limited to, determination that said payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then the obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous receipt of payment by the Registered Owner, continue to be effective or be reinstated as to such payment, all as though such previous payment to the Registered Owner had never been made. The provisions of the foregoing sentence shall survive termination of this Note and shall remain a valid and binding obligation of County.
- 1.7 Adjustments to Scheduled Payments. To the extent that the Assessment Contract contemplates adjustments to Assessment Payments becoming due (such as interest rate changes or prepayments), the Registered Owner or its designee shall be responsible for making such calculations and delivering them to the Program Administrator in a timely fashion. So long as necessary information regarding adjustments to any scheduled Assessment Payment (as defined in the Assessment Contract) is delivered by the Registered Owner to the Program Administrator before {ANNUAL TAX FILING DATE} of each calendar year, then the County shall include such adjustments on the next tax roll applicable to the Property (as defined in the Assessment Contract). The Program Administrator shall promptly deliver any prepayment notices received from the Property Owner to the Registered Owner or its designee, and the Registered Owner shall promptly provide (a) a calculation of the required prepayment amount, including any prepayment premium and rebated interest, and (b) payment instructions. Upon receipt of such calculation, the Program Administrator shall deliver a payoff statement to the Property Owner in accordance with the Assessment Contract. The Program Administrator may conclusively rely on any payment calculations delivered by the Registered Owner hereunder.

2. REPRESENTATIONS AND WARRANTIES OF THE COUNTY.

The County hereby makes the following representations and warranties for the benefit of the Registered Owner as of the date hereof:

- 2.1 Authorization. The County has taken (i) all necessary official action required of it under the Property Assessed Clean Energy Act, 50 ILCS 50/1 et. seq. (the "**PACE Act**") to establish

the property assessed clean energy program for the County, including approving the ordinance (the “**Ordinance**”) of the County Board of the County on {ORDINANCE DATE}, and (ii) all such action as may be required on the part of the County to carry out, give effect to and consummate the transactions contemplated in the PACE Documents.

- 2.2 Organization; Authority. The County is a political subdivision of the State of Illinois, duly organized and validly existing as a County under the laws of the State of Illinois, with the power to adopt the Ordinance, issue the PACE Documents, and perform the agreements on its part contained in or related to the PACE Documents.
- 2.3 C PACE Act. This Note is issued pursuant to the provisions of, and in full compliance with, the PACE Act. This Note constitutes a “PACE bond” for purposes of the PACE Act.
- 2.4 Enforceability. When executed and delivered by the respective parties thereto, each of the PACE Documents executed by the County will constitute a legal, valid and binding obligation of the County enforceable in accordance with its terms.
- 2.5 Compliance with Laws and Agreements. The execution, delivery and performance by the County of each of the PACE Documents and the performance by the County of its obligations under each of the PACE Documents and the transactions contemplated hereby and thereby (i) do not contravene any provisions of law applicable to the County, and (ii) do not conflict with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other instrument to which the County is a party, by which the County may be bound or to which the County or its property may be subject.
- 2.6 No Actions. To the best knowledge of the County after reasonable inquiry, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, or public board or body is pending or threatened, in any way affecting the existence of the County or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the execution and delivery of the Ordinance or the PACE Documents, or the consummation by the County of the transactions contemplated by the Ordinance, the PACE Documents, or in any way contesting or affecting the validity or enforceability of the Ordinance, the PACE Documents, any other applicable agreements, or any action of the County contemplated by any of those documents, or in any way contesting the powers of the County or its authority with respect to the Ordinance, the PACE Documents, any other applicable agreements, or any action of the County contemplated by any of such documents.
- 2.7 Consents and Approvals. No further approval of, or consent from, any governmental authority is required for the execution and delivery by the County of the PACE Documents or the consummation by the County of any other transaction contemplated by the PACE Documents that has not been obtained.

3. COVENANTS OF THE COUNTY.

- 3.1 Direction of Payments. The County will pay all Pledged Revenues to the account specified by the Registered Owner in a written notice to The Illinois Energy Conservation Authority NFP, as program administrator (together with any successor, the “**Program Administrator**”) within 30 days of receipt and identification.
- 3.2 PACE Note and Interest Fund. The County agrees that it shall establish funds for the collection of the Pledged Revenues as separate funds maintained on the County’s books and records and to be held at a bank with which the County maintains a depository

relationship. As set forth in Section 1.3, the County has assigned to the Registered Owner all of its right, title and interest in and to all Pledged Revenues maintained in such fund and further agrees that it holds such amounts in trust for the benefit of the Registered Owner.

- 3.3 Amendment to Assessment Contract. The County shall not amend the Assessment Contract in any manner that is materially adverse to the Registered Owner without the Registered Owner's prior written consent.
- 3.4 Property Tax Code Compliance. The County will comply with all requirements of the PACE Act, the Property Tax Code of the State of Illinois, as amended (the "**Property Tax Code**"), the Assessment Contract and this Note to assure the timely collection of the Pledged Revenues, including, without limitation, the enforcement of delinquent Assessment Payments (as defined in the Assessment Contract) as set forth in Section 3.5 and any other applicable law.
- 3.5 Delinquencies. If an Assessment Payment (as defined in the Assessment Contract) is delinquent according to the Property Tax Code, the County shall take such steps and follow such procedures to collect delinquent property tax payments as specified in the Property Tax Code. Upon receipt of any Pledged Revenues via the tax sale procedures available to the County pursuant to the Property Tax Code, the County shall within 30 days transfer such amounts to the Registered Owner at the Registered Owner's designated account.
- 3.6 Bankruptcy of the County. The County acknowledges and agrees that amounts collected by the County as Pledged Revenues are intended to be "special revenues" as defined in Section 902(2) of the United States Bankruptcy Code. The foregoing is a statement of intent and not a guaranty or assurance that such proceeds will be treated as special revenues. In the event that the County files a petition under Chapter 9 of the United States Bankruptcy Code, the County shall not oppose a post-petition motion by the Registered Owner seeking (a) to obtain relief from the automatic stay applicable in bankruptcy cases with respect to all Pledged Revenues received by the County prior to such petition being filed to enable such Pledged Revenues to be paid to the Registered Owner, or (b) to ensure that all Pledged Revenues received by the County following such petition being filed are timely paid to the Registered Owner.
- 3.7 Further Assurances. The County will adopt, make, execute and deliver any and all such further ordinances, resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of the PACE Documents, and for the better assuring and confirming unto the County the rights and benefits provided in this Note.
- 3.8 Delegation of Duties. For the avoidance of doubt, to the extent permitted by applicable law, the County may cause the Program Administrator to perform any of its obligations under this Note.

4. EVENTS OF DEFAULT; REMEDIES.

- 4.1 Events of Default. Any one or more of the following events will constitute an "Event of Default":
 - (a) Default in the due and punctual payment of any amounts due under this Note by the County;
 - (b) Default by the County in the observance of any of its other covenants in the PACE Documents, and the continuation of such default for a period of thirty (30) days after the County has been given notice in writing of such default by the Registered Owner; *provided that*, if such failure is curable, but not within such thirty (30) day period, such

failure shall not constitute an Event of Default if, within such thirty (30) day period, the County diligently pursues such cure and such failure is cured within a reasonable period of time;

- (c) Failure of the Registered Owner to have a valid and binding priority lien and security interest in the Pledged Revenues; or
- (d) The filing by the County of a voluntary petition in bankruptcy, or failure by the County promptly to lift any adjudication of the County as bankrupt, or the approval by a court of competent jurisdiction of a petition applicable to the County in any proceedings instituted under the provisions of the United States Bankruptcy Code.

4.2 Remedies.

- (a) Following the occurrence of an Event of Default, Registered Owner will have the right:
 - (i) By mandamus or other suit or proceeding at law or in equity to enforce its, its rights against the County and any of the members, officers and employees of the County, and to compel the County or any such members, officers or employees to perform and carry out their duties under the PACE Act and their agreements herein;
 - (ii) By suit in equity to enjoin any actions or things that are unlawful or violate the rights of the Owners; or
 - (iii) To exercise every power and remedy available to it under the PACE Act or other applicable law.
- (b) No remedy herein conferred upon or reserved to the Registered Owner is intended to be exclusive of any other remedy. Every such remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the PACE Act or any other law.

5. **LIMITED RECOURSE.**

THE SOLE SOURCE OF REPAYMENT OF THIS NOTE SHALL BE THE PLEDGED REVENUES. THE COUNTY WILL NOT BE IN ANY WAY LIABLE OR RESPONSIBLE FOR PAYMENT OF PLEDGED REVENUES TO REGISTERED OWNER, BEYOND REMITTING PLEDGED REVENUES PAID TO THE COUNTY BY PROPERTY OWNER OR IN CASES OF DEFAULT BY PROPERTY OWNER, BY A TAX PURCHASER VIA TAX SALE. EXCEPT AS SPECIFICALLY STATED IN THE ASSESSMENT CONTRACT, NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE COUNTY OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF ILLINOIS SHALL BE AVAILABLE FOR THE PAYMENT OF THE PRINCIPAL, INTEREST OR PENALTIES ON THIS NOTE OR ANY COSTS INCIDENTAL THERETO. NO OFFICIAL, AGENT OR EMPLOYEE OF THE COUNTY WILL BE INDIVIDUALLY OR PERSONALLY LIABLE FOR THE PAYMENT OF AMOUNTS DUE UNDER THIS NOTE; BUT NOTHING HEREIN CONTAINED WILL RELIEVE ANY SUCH OFFICIAL, AGENT OR EMPLOYEE FROM THE PERFORMANCE OF ANY OFFICIAL DUTY PROVIDED BY LAW.

6. **MISCELLANEOUS PROVISIONS.**

- 6.1 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Note.

- 6.2 Interpretation. This Note shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of the provision herein.
- 6.3 Severability of Provisions. Each provision of this Note shall be severable from every other provision of this Note for the purpose of determining the legal enforceability of any specific provision.
- 6.4 Counterparts; Electronic Execution. Delivery of an executed counterpart of this Note by electronic method of transmission shall be equally as effective as delivery of a manually executed counterpart of this Note.
- 6.5 Governing Law. This Note shall be governed by and construed according to the laws of the State of Illinois.
- 6.6 Assignments; Note Register. To register the transfer of this Note, Registered Owner must present to the County and the Program Administrator a duly executed Form of Assignment in substantially the form attached hereto as Exhibit B. The County shall cause {REGISTRAR} to keep a register of the ownership and transfers of this Note. The register will show the date, maturity amount, rate of interest and last Registered Owner and will at all times be open to inspection by the County and the Registered Owner during regular business hours on any Business Day, upon reasonable notice.
- 6.7 Interpretation. Unless the context of this Note clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Note refer to this Note as a whole and not to any particular provision of this Note, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Note unless otherwise specified. Any reference in this Note to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). Any reference herein to any person or entity shall be construed to include such person’s or entity’s successors and assigns. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties. Any requirement of a writing contained herein shall be satisfied by the transmission of a record and any record transmitted shall constitute a representation and warranty as to the accuracy and completeness of the information contained therein.

[Signature page follows.]

IN WITNESS WHEREOF The County of Winnebago, Illinois, by its County Board, has caused this Note to be executed by the manual or duly authorized facsimile signature of the Chairman of its County Board and attested by the manual or duly authorized facsimile signature of the County Clerk and ex-officio Clerk of the County Board, all as appearing hereon and as of the dated date identified above.

Chairman of the County Board

ATTEST:

County Clerk and ex-officio Clerk
of the County Board

Date of Authentication: {EFFECTIVE DATE}

CERTIFICATE
OF
AUTHENTICATION

Note Registrar and Paying Agent:
{REGISTRAR}
{Registrar City},{Registrar State}

This Note is one of the Notes described in the within-mentioned Ordinance and is one of the Taxable PACE Revenue Notes, ({PROPERTY ADDRESS 1} Project) having a dated date of {EFFECTIVE DATE}, of The County of Winnebago, Illinois.

{REGISTRAR},
as Note Registrar

By _____
Authorized Officer

EXHIBIT A

Assessment Contract

See attached.

EXHIBIT B

Form of Assignment

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

[Here insert identifying number such as
TID, SSN, or other]

(Name and Address of Assignee)

the within Note and does hereby irrevocably constitute and appoint
[name of Note Registrar] to transfer such Note on the books kept for registration thereof with full
power of substitution in the premises.

Dated:

Signature:

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CERTIFICATION OF ORDINANCE AND MINUTES

I, the undersigned, do hereby certify that I am the duly qualified and acting County Clerk of The County of Winnebago, Illinois (the “*County*”), and that as such official I am the keeper of the records and files of the County Board of the County (the “*Board*”).

I do further certify that the foregoing is a full, true and complete transcript of that portion of the minutes of the meeting of the Board held on the 27th day of May, 2021, insofar as same relates to the adoption of an ordinance numbered _____ entitled:

AN ORDINANCE establishing a Property Assessed Clean Energy (PACE) Program and a PACE Area to finance and/or refinance the acquisition, construction, installation, or modification of energy projects; providing for the issuance of not to exceed \$500,000,000 Taxable PACE Revenue Notes of the County to finance projects pursuant to the County’s PACE Program, providing for the payment of said notes, authorizing the sale of said notes to the purchaser thereof; and other matters related thereto

(the “*Ordinance*”), a true, correct and complete copy of which Ordinance as adopted at said meeting appears in the foregoing transcript of the minutes of said meeting.

I do further certify that the deliberations of the Board on the adoption of said ordinance were taken openly; that the vote on the adoption of said ordinance was taken openly; that said meeting was held at a specified time and place convenient to the public; that notice of said meeting was duly given to all newspapers, radio or television stations and other news media requesting such notice; that an agenda for said meeting was posted on a day which was not a Saturday, Sunday or legal holiday for Illinois municipalities and at least 48 hours in advance of holding said meeting at the location where said meeting was held and at the principal office of the Board; that said agenda described or made specific reference to said ordinance; and that said meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, the Counties Code of the State of Illinois, as amended, and the Property Assessed Clean Energy Act of the State of Illinois, as amended, and that the Board has complied with all of the provisions of said Acts and said Code, and with all of the procedural rules of the Board in the adoption of said ordinance.

IN WITNESS WHEREOF, I hereunto affix my official signature and the seal of the County,
this 27th day of May, 2021.

County Clerk, The County of Winnebago,
Illinois

[SEAL]

AN ORDINANCE establishing a Property Assessed Clean Energy (PACE) Program and a PACE Area to finance and/or refinance the acquisition, construction, installation, or modification of energy projects; providing for the issuance of not to exceed \$500,000,000 Taxable PACE Revenue Notes of the County to finance projects pursuant to the County's PACE Program, providing for the payment of said notes, authorizing the sale of said notes to the purchaser thereof; and other matters related thereto

County Board
Meeting
February 11,
2021

SPONSORED BY: JAIME SALGADO

ORDINANCE
OF THE
COUNTY BOARD OF THE COUNTY OF WINNEBAGO,
ILLINOIS

2021-00

ORDINANCE ESTABLISHING A PROPERTY ASSESSED
CLEANENERGY ("PACE") PROGRAM IN THE COUNTY
OF
WINNEBAGO, ILLINOIS, DESIGNATING A PACE AREA, PROVIDING
FOR PROPERTY ASSESSMENTS, AND APPROVING RELATED
MATTERS

WHEREAS

WHEREAS, the County of Winnebago, Illinois (~~the “County”~~), is a duly organized and existing unit of local government created and existing under the provisions of the laws of the State of Illinois (the “State”), and is now operating under the provisions of the Counties Code of the State of Illinois, as amended (the ~~“Counties Code”~~); and

~~WHEREAS, is authorized~~ pursuant to the Property Assessed Clean Energy Act of the State of Illinois, as amended (the ~~“PACE Act”~~), ~~the County Board of the County is authorized~~ to establish a property assessed clean energy (~~PACE~~) program (the ~~“PACE Program”~~) ~~to, create a~~ PACE area (as defined in the PACE Act) and finance and/or refinance ~~Energy Projects~~energy projects (as defined in the ~~Act~~) ~~intended to decrease energy consumption using voluntary assessments recorded against privately owned commercial, industrial, non-residential agricultural, or multi-family (5 or more units)~~PACE Act), and may, under the power granted by the Counties Code, as supplemented by the Local Government Debt Reform Act of the State of Illinois, as amended (the “Debt Reform Act”), and the other Omnibus Bond Acts, as amended, exercise certain powers and perform certain functions pertaining to its government and affairs, including, but not limited to, the power to make assessments on real property ~~falling within the jurisdiction of the County and in an area designated by the County~~ and to incur limited obligation debt secured by such assessments; and

WHEREAS, the PACE Act states that a program such as ~~at the~~ PACE Area ~~Program~~ may be administered by a program administrator (as defined in the PACE Act);

WHEREAS, the County desires to designate The Illinois Energy Conservation Authority NFP (“IECA”) as program administrator (the “Program Administrator”) for the PACE Program;
and

~~WHEREAS, in order to implement and facilitate the Program, the Act provides that the County is authorized to enter into agreements with qualifying owners of real property;~~

~~Program Administrators (as defined in the Act) and third party capital providers to provide for the imposition of assessments against qualifying properties on the land records of the County to secure the repayment of contractual assessments for the purpose of providing owners of qualifying properties located in the County with affordable financing for energy improvements with respect to such properties; and~~

WHEREAS

WHEREAS, the Program Administrator has prepared the report attached hereto as *Exhibit A* (the “*Program Report*”) setting forth certain terms of the proposed PACE Program in conformity with the PACE Act; and

WHEREAS, the County now desires to establish the PACE area as the entire corporate limits of the County described in Exhibit B and to establish the PACE Program as further described herein and in the Program Report and to finance or refinance energy projects; and

WHEREAS, the County Board of the County (the “*Board*”) has not adopted any ordinance, resolution, order or motion which restrict or limit the exercise of its powers pursuant to the Counties Code and Debt Reform Act in the issuance of limited recourse bonds or notes without referendum in furtherance of essential public and governmental purposes or which provides any special rules or procedures for the exercise of such power; and

WHEREAS, pursuant to the PACE Act, in order to provide capital in furtherance of the PACE Program the County may issue bonds or notes pursuant to and in accordance with Section 35 of the PACE Act, secured by payments under one or more Assessment Contracts, or if applicable, municipal bond insurance, letters of credit, or public or private guarantees of sureties or, if applicable, other lawfully available funds of the County including revenues sources or reserves from bond or note proceeds; and

WHEREAS, the Board does hereby determine that it is advisable and in the best interests of the County to establish the Program in and for the County, designate a PACE Area, designate a program administrator, provide for property assessments, authorize the issuance of not to exceed \$500,000,000 Taxable PACE Revenue Notes or Bonds (“*Bond*” or “*Bonds*” are referred to

throughout this Ordinance interchangeably as, the “Note” or the “Notes”) secured by payments under one or more Assessment Contracts, within certain expressed and delegated limitations as hereinafter set forth, and approve certain related matters:

~~NOW~~Now, ~~THEREFORE, BE IT ORDAINED,~~THEREFORE, Be It Ordained by the County Board of the County of Winnebago, Illinois, as follows:

RED LINE VERSION

Section 1.-~~Incorporation of~~ ~~Preambles~~the Recitals. The Board hereby finds that all of the recitals contained in the preambles to this Ordinance are true~~and~~, correct and ~~does~~complete and are hereby ~~incorporate them into this Ordinance~~incorporated by ~~this~~ reference thereto and are made a part hereof.

Section 2.-~~Public Purpose:~~ ~~Approval of Assessment Contracts.~~ The Board hereby finds that the imposition of assessments against qualifying properties on the records of the County to secure the repayment by property owners of ~~voluntary contractual assessments~~ ("Assessment Contracts") entered into for the purpose of providing owners of qualifying properties ("~~Owners~~")~~located in the County~~each an "Owner" with affordable financing or refinancing for Energy Projects (as defined in the PACE Act) pursuant to the PACE Program further essential public and governmental purposes of the County. ~~Such~~ The Board further finds it is necessary and in the best interests of the County to provide capital in furtherance of the PACE Program and issue the Notes for such purpose upon the terms provided herein. It is hereby found and determined that such borrowing of money is advisable for the public health, safety, welfare and convenience, is for a proper public purpose or purposes include, but are not limit to, reduced energy costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment is in the public interest, and is authorized pursuant to the PACE Act, the Counties Code, and the Debt Reform Act, and these findings and determinations shall be deemed conclusive.

~~The form of Assessment Contract attached as an Exhibit to the Report (as hereafter defined) is hereby approved. Any one of the Chairman of the Board (the "Chairman"), the County Administrator, the Chief Financial Officer, or their designee (the "Authorized Officers") is hereby authorized to negotiate and execute on behalf of the County the terms of any Assessment Contracts with Owners pursuant to the procedures set forth in the Report and as required by the Act, and upon execution to record~~

~~such Assessment Contracts or an extract or memorandum summarizing thereof with the Recorder of Deeds of the County (the "County Recorder"). Prior to execution of any Assessment Contract, an Authorized Officer or the Program Administrator (as hereafter defined) shall make all determinations required by the Act.~~

~~When an Assessment Contract is executed and delivered by the County as herein provided, such Assessment Contract will be binding on the County; from and after the execution and delivery of such Assessment Contract, the officers, employees, and agents of the County are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such Assessment Contract as executed. Each Assessment Contract shall be filed by or at the direction of the County with the County Recorder.~~

~~Section 3. –~~ Designation of *the* Program Administrator. ~~The County intends to facilitate access to capital to provide funds for Energy Projects to be repaid pursuant to the terms of the Assessment Contracts~~ Board hereby designates the Program Administrator as program administrator for the PACE Program on the terms and pursuant to the conditions set forth in an agreement for services between the County and the Program Administrator. ~~In order to facilitate and finance the PACE Program, the Board hereby approves the execution and delivery of a Program Development and Administrative Services Agreement (the "Administrative Services Agreement"), in substantially the form attached hereto as Exhibit A, with The Illinois Energy Conservation Authority NFP ("IECA"), an entity that itself, its affiliates, consultants, or advisors shall have done business as a program administrator or capital provider for a minimum of 18 months as required by the Act (the "Program Administrator"). IECA shall serve as the Program Administrator for the PACE Area designated herein by the County. The Authorized Officers are hereby authorized and directed to execute and~~

~~attest a final version of the Administrative Services Agreement and any supplement or amendment thereto in the name of the County, with such changes therein as such officials shall approve, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form before the Board. As the Program Administrator, IECA will administer the Program on behalf of the County and shall be responsible for arranging capital in furtherance of the Program.~~

RED LINE VERSION

~~In order to provide capital in furtherance of the Program, the County may issue bonds (the "PACE Bonds"), pursuant to and in accordance with Section 35 of the Act, secured by payments under one or more Assessment Contracts, or if applicable, municipal bond insurance, letters of credit, or public or private guarantees of sureties or, if applicable, other lawfully available funds of the County including revenue sources or reserves from PACE proceeds.~~B. The Program Administrator shall also assist the County in determining the terms of sale of any ~~PACE Bonds~~Notes, which may be sold to one or more capital providers (each a "Purchaser").

~~**Section 4. Energy Projects.** The Board approves the following Energy Projects which may be financed pursuant to the Program: the acquisition, construction, installation or modification of an Alternative Energy Improvement, Energy Efficiency Improvement, Renewable Energy Improvement, Resiliency Improvement or Water Use Improvement (each as defined in the Act), affixed to real property (including new construction).~~Section 4. Report of the Program Administrator; Creation of PACE Area. The Board hereby finds as follows:

~~**Section 5. Designation of PACE Area.** The Board designates the jurisdictional boundaries of the County, in their entirety, as a PACE Area.~~

~~**Section 6. Report.** Pursuant to Section 15 of the Act, and in order to establish the Program, a report on the Program (the "Report") shall be finalized by the Program Administrator and approved by the County, which Report shall identify and include at a minimum all of the following:~~

~~A. Form of assessment contract between the County and record owner governing the terms and conditions of financing and assessment under the Program; and~~

~~B. Identification of the County officials authorized to enter into an assessment contract on behalf of the County; and~~

~~C. The application process and eligibility requirements for financing or refinancing Energy Projects under the Program; and~~

~~D. Method for determining interest rates on amounts financed or refinanced under assessment contracts, repayment periods, and the maximum amount of an assessment, if any; and~~

~~E. Explanation of the process for billing and collecting assessments; and~~

~~F. Plan to finance the Program pursuant to the issuance of PACE bonds as authorized under the Act; and~~

~~G. Information regarding all of the following, to the extent known, or procedures to determine the following in the future: (i) any revenue source or reserve funds or funds to be used as security for the above mentioned bonds, and (ii) any application, administration or other Program fees to be charged to record owners participating in the Program that will be used to finance and reimburse all or a portion of costs incurred by the County as a result of the Program; and~~

~~H.—~~

~~I. J. — Require the term of an assessment not exceed the useful life of the Energy Project financed or refinanced under an assessment contract; provided that an assessment contract financing or refinancing multiple energy projects with varying lengths of useful life may have a term that is calculated in accordance with the principles established in the Report; and~~

~~K. Require an appropriate ratio of the amount of the assessment to the greater of any of the following: (i) the value of the property as determined by the office of the County Assessor or (ii) the value of the property as determined by an appraisal conducted by a licensed appraiser; and~~

~~L. Require the record owner of property subject to a mortgage obtain written consent from the mortgage holder before participation in the Program; and~~

~~M. Marketing and participant education provisions; and~~

~~N. Quality assurance and antifraud measures.~~

~~The Report and all the terms thereof and attachments thereto, in substantially the form attached hereto as *Exhibit B*, are hereby approved, and the Chairman and the County Clerk are hereby authorized and directed to execute and attest a final version of the Report and any supplement or amendment thereto in the name of the County, with such changes therein as such officials shall approve, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form before the Board. The final version of the Report shall be made available for public inspection at the office of the County Administrator.~~

~~**Section 7. Public Hearing.** Pursuant to the Act, a public hearing is not required by the County in order to establish, amend or facilitate the Program, to establish a PACE Area or to enter into any agreements in connection therewith. The County has not held a discretionary public hearing on the Program.~~

~~**Section 8.**~~

~~(a) The financing and/or refinancing of energy projects is a valid public purpose~~

and serves an essential governmental function;

(b) The County intends to facilitate access to capital from the Program Administrator approved by the County or as otherwise permitted by the PACE Act, to provide funds for energy projects which will be repaid by assessments on the property (as defined in the PACE Act) benefitted with the agreement of the record owners (as defined in the PACE Act) of such property;

(c) A description of the territory within the PACE area, the types of energy projects that may be financed and/or refinanced, and the description of the proposed arrangements for financing the PACE Program through the issuance of PACE bonds under or in accordance with Section 35 of the PACE Act, which PACE bonds may be purchased by one or more capital providers (as defined in the PACE Act); are all set forth in the Program Report which is attached hereto as *Exhibit A*. The Program Report is hereby incorporated by reference thereto and made a part hereof. The County hereby approves the Program Report and hereby establishes the PACE area as the corporate limits of the County, all as further described in the Program Report. The Program Report shall be made available for public inspection in the office of the County Clerk of the County (the “*County Clerk*”).

Section 5. Note Details and Security. The Board hereby authorizes that there be borrowed for and on behalf of the County the Notes if issued, in one or more series in an aggregate principal amount not to exceed \$500,000,000 for the purposes aforesaid; and that the Notes shall be designated “Taxable PACE Revenue Note, ([Street Address] Project)” with such series or other designation as set forth in the Note Notification (as hereinafter defined). The Notes, if issued, shall be dated the date of issuance as set forth in the Note Notification and shall also bear the date of authentication, shall be in fully registered form, shall be in denominations as described in the Note Notification (but no single Note of a series shall represent installments of principal maturing on more than one date), and shall bear such further identifying information set forth in the Note. The Notes shall be in substantially the form attached hereto as *Exhibit C*, with such changes therein as such officials executing thereof shall approve, their execution to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form before the Board, and such form and the terms contained therein are hereby approved by the Board.

Each Note, if issued, shall be secured solely by payments received by the County under

and pursuant to the terms of a related Assessment Contract. The County shall make principal payments on the Note, together with applicable interest, fees, penalties, indemnities and other amounts payable to the Registered Owner under the pledged Assessment Contract, in the amounts and on the dates set forth in the Note Notification. Such County payments shall be made solely from the revenues received by the County under the related Assessment Contract, excluding (i) amounts collected from direct or indirect indemnification rights for the benefit of the County or other persons under the pledged Assessment Contract or any related document, (ii) any administrative fees and expenses to the extent payable to or on behalf of the County or its agent and (iii) 80% of the sums received by the County from the collection of penalties and statutory interest on delinquent payments under such Assessment Contract, which shall be retained by the County as collections fees (the “Pledged Revenues”).

Payments due on each Note shall be paid by or at the direction of the note registrar and paying agent (which shall be the Treasurer of the County (the “Treasurer”), the Registered Owner, the Program Administrator or a bank or trust company authorized to do business in the State of Illinois) as set forth in the Note Notification (the “Note Registrar”), to the person in whose name such Note is registered (the “Registered Owner”) at the close of business on the 15th day preceding any regular or other payment date on the Notes (the “Record Date”), in the manner provided in writing by the Registered Owner to the Note Registrar.

Section 6. Execution; Authentication. The Notes shall be executed on behalf of the County by the manual or duly authorized facsimile signature of the President of the Board and attested by the manual or duly authorized facsimile signature of the County Clerk. In case any such officer whose signature shall appear on any Note shall cease to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All Notes shall have thereon a

certificate of authentication, substantially in the form hereinafter set forth, duly executed by the Note Registrar as authenticating agent of the County and showing the date of authentication. No Note shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Note Registrar by manual signature, and such certificate of authentication upon any such Note shall be conclusive evidence that such Note has been authenticated and delivered under this Ordinance. The certificate of authentication on any Note shall be deemed to have been executed by it if signed by an authorized officer of the Note Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Notes issued hereunder.

Section 7. Registration of Notes; Persons Treated as Registered Owners. The County shall cause books (the “Note Register”) for the registration and for the transfer of the Notes as provided in this Ordinance to be kept at the principal office of the Program Administrator or the Note Registrar (the “Principal Office”), as set forth in the Note Notification. The County is authorized to prepare, and the Note Registrar shall keep custody of, multiple Note blanks executed by the County for use in the transfer and exchange of Notes.

Any Note may be transferred or exchanged, but only in the manner, subject to the limitations, and upon payment of the charges as set forth in the Note and accompanying Form of Assignment. The Note Registrar shall not be required to transfer or exchange any Note during the period beginning at the close of business on the 15th day of the month next preceding any payment date on such Note and ending at the opening of business on such payment date, nor to transfer or exchange any Note after notice of prepayment has been received by the Program Administrator.

The execution by the County of any fully registered Note shall constitute full and due authorization of such Note, and the Note Registrar shall thereby be authorized to authenticate, date and deliver such Note; *provided, however,* that the principal amount of outstanding Notes of each

series and maturity authenticated by the Note Registrar shall not exceed the authorized principal amount of Notes for such series and maturity less previous retirements.

The Registered Owner shall be deemed and regarded as the absolute owner thereof for all purposes, and payments due on any Note shall be made only to or upon the order of the Registered Owner thereof or its legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 8. *Prepayment.* The Notes shall be subject to prepayment pursuant to the terms and conditions of the related Assessment Contract. Other than in accordance with the terms and conditions in the Assessment Contract and to the fullest extent permitted by applicable law, the County shall not permit any reduction or deferral in the amount of Pledged Revenues without the written consent of the Registered Owner. The County shall, or shall cause the Program Administrator to, provide a reasonable period of time for the Registered Owner to review and approve any calculations necessary to effect prepayments in accordance with the Assessment Contract. The Program Administrator shall promptly notify the County in writing of the Notes or portions of Notes selected for prepayment and, in the case of any Note selected for partial prepayment, the principal amount thereof to be prepaid.

Section 9. *Sale of Notes.* Any one of the Authorized Officers is hereby authorized to proceed without any further authorization or direction from the Board, to sell the Notes upon the terms as prescribed in this Ordinance.

The Notes hereby authorized shall be executed as in this Ordinance provided as soon after the delivery of the Note Notification as may be, and, after authentication thereof by the Note Registrar, be delivered to the Purchaser upon receipt of the purchase price therefor.

Upon the sale of a series of the Notes, the Authorized Officers shall prepare a Notification of Sale, which shall include the pertinent details of sale of such series of Notes as provided herein

(the “Note Notification”). In the Note Notification, the Authorized Officers shall find and determine that such series of Notes have been sold at such price and bear interest at such rates that either the true interest cost (yield) or the net interest rate received upon the sale of such Notes does not exceed the maximum rate otherwise authorized by applicable law. Each Note Notification shall be entered into the records of the County and made available to the Board upon request; but such action shall be for information purposes only, and the Board shall have no right or authority at such time to approve or reject such sale as evidenced in a Note Notification.

Upon the sale of a series of Notes, the Authorized Officers and any other officers of the County, as shall be appropriate, shall be and are hereby authorized and directed to approve or execute, or both, such financing documents related to the sale of the Notes as may be necessary, including, without limitation, any contract for the sale of the Notes between the County and the Purchaser. Prior to the execution and delivery of a Note, the Authorized Officers shall find and determine that, to the best of their knowledge, no person holding any office of the County either by election or appointment, is in any manner financially interested, either directly, in his or her own name, or indirectly, in the name of any other person, association, trust or corporation, in the transactions contemplated herein.

The use by the Purchaser or the County of a term sheet relating to the notes (the “Term Sheet”) is hereby ratified, approved and authorized; the execution and delivery of the Term Sheet is hereby authorized; and the Authorized Officers are hereby authorized to take any action as may be required on the part of the County to consummate the transactions contemplated by this Ordinance, the Term Sheet and the Notes.

Section 10. Funds and Accounts.

A. There is hereby created the “PACE Note and Interest Fund” of the County (the “Note Fund”), which shall be a separate fund for the payment of the principal of and interest on the

Notes. The County shall create a subaccount of the Note Fund for each series of the Notes issued (each a “*Note Fund Subaccount*”). The Pledged Revenues and any other funds lawfully available for the purpose shall be timely deposited upon receipt by the County into a Note Fund Subaccount and used solely and only for the purpose of paying the principal of and interest on the related Notes. Accrued interest, if any, received upon delivery of the Notes, together with the amount of proceeds of the Notes as set forth in a Note Notification, shall be deposited as set forth in a Note Notification and be applied to pay the first interest coming due on such Notes. The County hereby assigns to the Registered Owner of a Note all of its right, title and interest in and to all Pledged Revenues maintained in the related Note Fund Subaccount and agrees to hold such amounts in trust for the benefit of the Registered Owner.

B. The remaining proceeds of the Notes and any premium received on the delivery of the Notes are hereby appropriated to pay the costs of issuance of the Notes, and that portion thereof not needed to pay such costs is hereby ordered to be deposited and held in a separate project fund (each a “*Project Fund*”) specific to and as referenced in the related Assessment Contract to pay costs of the project being financed thereby. It is not currently anticipated that the County will hold any Project Fund. Proceeds of any Note issued to refund or refinance existing Notes, Assessment Contracts or other obligations shall be deposited as set forth in the related Note Notification.

C. At the time of the issuance of the Notes, the costs of issuance of the Notes may be paid by the Purchaser, the Owner, the Program Administrator or the Note Registrar on behalf of the County.

Section 11. *Property Assessments.* For the purpose of providing funds required to pay annual amounts due from Owners under the Assessment Contracts, and which amounts may be assigned by the County in furtherance of the PACE Program, there is hereby assessed upon property within the County and subject to an Assessment Contract, in the years for which amounts

due under such Assessment Contract are outstanding, a direct annual assessment for that purpose; such assessment shall be in addition to all other assessments and taxes of the County.

Any such assessments are to be collected at the same time and in the same manner as taxes collected under the Illinois Property Tax Code. Alternatively, upon the approval of an Authorized Officer, assessments may be billed and collected by the Program Administrator or by another third party assessment servicer.

The County expressly intends to assign and/or pledge payments to be received from each such Assessment Contract in furtherance of the PACE Program. The County covenants and agrees with the beneficial holders of assessments, including Registered Owners, that so long as such assessments remain outstanding, the

County will take no action or fail to take any action which in any way would adversely affect the ability of the County to assess and collect the assessments provided for in this Ordinance. The County and its officers will comply with all present and future applicable laws in order to assure that the assessments may be permitted to be assessed, extended, and collected pursuant to applicable law.

Section 912.- Limited Obligation of the County. Any obligation of the County, including ~~any PACE Bonds~~ the Notes, to provide funds pursuant to an assignment of amounts to be received under an Assessment Contract shall be a special, limited obligation of the County, payable solely from the funds provided in such Assessment Contract and is not a general obligation of the County, and the full faith and credit of the County is not pledged to the payment of any obligation secured by such assigned amounts, including the Notes. The ~~Assessments~~ Assessment Contracts and any obligations secured thereby, including the Notes, shall be payable solely and only from payments of assessments on benefitted property within the PACE Area, and if applicable from revenue sources or reserves established in support of such obligations.

Section 13. Covenants of the County. The County shall not amend an Assessment Contract or any related Notes in any manner that is materially adverse to the Registered Owner of a Note without such Registered Owner's prior written consent. The County covenants and agrees with each Registered Owner that so long as any Note remains outstanding, the County will take no action or fail to take any action which in any way would adversely affect the ability of the County to assess and collect the Pledged Revenues. The County and its officers will comply with all present and future applicable laws in order to assure that the Pledged Revenues may be permitted to be assessed, extended, and collected pursuant to applicable law.

Section 1014.- No Conflicts; Further Acts of the County. It is hereby found that no person holding any office of the County either by election or appointment, is in any manner financially interested, either directly, in his or her own name, or indirectly, in the name of any other person, association, trust or corporation, in the transactions contemplated hereby.

When financing documents are executed and delivered by or on behalf of the County in support of the PACE Program, such financing documents will be binding on the County; from and after the execution and delivery of such financing documents, the officers, employees, and agents of the County are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such financing documents as executed.

Section ~~11~~15.-Additional Ordinances. The Board may adopt additional ordinances or proceedings supplementing or amending this Ordinance. Such additional ordinances or proceedings shall in all instances become effective immediately without publication or posting or any further act or requirement. This Ordinance, together with such additional ordinances or proceedings, shall constitute complete authority for the County to implement the PACE Program, make the property assessments described herein and issue the Notes, all in accordance with applicable law.

~~Section 12.~~

Section 16. No Public Hearing; Program Established. The Board hereby finds that no public hearing shall be required in connection with the adoption or amendment of the PACE Program and hereby establishes the PACE Program in accordance with the Program Report.

Section 17. Assessment Contract. The form of “assessment contract” (as defined in the PACE Act) attached as Exhibit A to the Program Report is hereby approved by the County. Any one of the Chairman of the Board, the County Administrator, the Chief Financial Officer, or their designee (the “Authorized Officers”) is hereby authorized to negotiate, execute, and deliver one or more assessment contracts with record owners meeting the requirements set forth in the Program Report (each, an “Assessment Contract”) in substantially the form of Exhibit A to the Program Report, with such changes, deletions, and insertions as shall be approved by the Authorized Officer and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of such Assessment Contract, and upon execution to record such Assessment

Contract with the Recorder of Deeds of Winnebago County. The execution of such agreements and instruments shall be conclusive evidence of such approval. Prior to execution of any Assessment Contract, the Authorized Officer shall make the determination set forth in clause (i) below and shall have received evidence of items (ii) through (xi) below, to be documented in a written notification, certified by the property owner, to be filed with the office of the County Clerk:

(i) that the property to be assessed is entirely within the PACE area of the County;

(ii) that there are no delinquent taxes, special assessments or water or sewer charges on the property to be assessed;

(iii) that there are no delinquent assessments on the property under a property assessed clean energy program;

(iv) whether there are any involuntary liens on the property, including, but not limited to, construction or mechanics liens, lis pendens or judgments against the record owner, environmental proceedings, or eminent domain proceedings;

(v) that no notices of default or other evidence of property-based debt delinquency have been recorded and not cured;

(vi) that the record owner is current on all mortgage debt on the property, the record owner has not filed for bankruptcy in the last 2 years, and the property is not an asset in a current bankruptcy proceeding;

(vii) that all work requiring a license under any applicable law to acquire, construct, install, or modify an energy project shall be performed by a licensed contractor that has agreed to adhere to a set of terms and conditions through a process established by the County or the Program Administrator and described in the Program Report;

(viii) the contractor or contractors to be used have signed a written acknowledgement that the County will not authorize final payment to the contractor or contractors until the County has received written confirmation from the record owner that the energy project was properly acquired, constructed, installed or modified and is operating as intended; *provided, however*, that the contractor or contractors retain all legal rights and remedies in the event there is a disagreement with the record owner;

(ix) that the aggregate amount financed or refinanced under one or more assessment contracts does not exceed 25% in relation to the greater of any of the following:

(A) the value of the property as determined by the office of the county

assessor; or

(B) the value of the property as determined by an appraisal conducted by a licensed appraiser;

(x) that an evaluation of the existing water or energy use and a modeling of expected monetary savings have been conducted for any proposed energy efficiency improvement (as defined in the PACE Act), renewable energy improvement (as defined in the PACE Act), or water use improvement (as defined in the PACE Act), unless the water use improvement is undertaken to improve water quality in accordance with the procedures set forth in the Program Report; and

(xi) before entering into the Assessment Contract with the County, the record owner shall have provided to the mortgage holders of any existing mortgages encumbering or otherwise securing the property a notice of the record owner's intent to enter into the Assessment Contract with the County, together with the maximum principal amount to be financed or refinanced and the maximum assessment necessary to repay that amount, along with an additional request that the mortgage holders of any existing mortgages consent to the record owner subjecting the property to the PACE Program. Prior to the execution of any Assessment Contract, the County shall have been provided with a copy or other proof of those notices and the written consent of the mortgage holder for the record owner to enter into the Assessment Contract which acknowledges that (a) the existing mortgage or mortgages for which consent was received will be subordinate to the Assessment Contract and the lien created thereby and that the County or, if applicable, its permitted assignee (as defined in the PACE Act) can foreclose the property if the assessments are not paid.

Section 18. Additional Actions. The Authorized Officer is hereby authorized:

(i) to approve the form of Program Handbook of the Program Administrator (as defined in the Program Report) setting forth certain additional requirements, procedures, and descriptions relating to the PACE Program and to negotiate, execute, and deliver such other supporting documents as may be necessary or appropriate to implement the PACE Program;

(ii) in connection with the issuance of PACE bonds by the Illinois Finance Authority, a body politic and corporate duly organized and validly existing under and by virtue of the laws of the State (the "Authority"), to finance and/or refinance energy projects in accordance with the PACE Act and pursuant to subsection (d) of Section 825-65 of the Illinois Finance Authority Act of the State of Illinois, as amended, to negotiate, execute, and deliver one or more agreements assigning to the Authority an Assessment Contract securing such PACE bonds; and

(iii) to approve changes, updates, amendments, modifications or supplements to the Program Report to the extent such changes, updates, amendments, modifications or supplements comply with the parameters and requirements set forth in the PACE Act.

Section 19. Enactment. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof. All ordinances, orders and resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed, and this Ordinance shall take effect and be in full force immediately upon its adoption.

Section 20. Severability. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 1321. Repealer and Effective Date. All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed and this Ordinance shall be in full force and effect forthwith upon its adoption.

~~Respectfully submitted,~~

~~FINANCE COMMITTEE~~

AGREE

DISAGREE

Jaime Salgado, Chairman

Jaime Salgado, Chairman

Joe Hoffman

Joe Hoffman

Jean Crosby

Jean Crosby

Steve Schultz

Steve Schultz

Keith McDonald

Keith McDonald

John Butitta

John Butitta

Paul Arena

Paul Arena

APPROVED this ____

This Ordinance shall become effective upon its passage and approval.

PASSED by the County Board of The County of Winnebago, Illinois.

RED LINE VERSION

, this 27th day of ~~May~~, 2021 ~~by~~.

Chairman of the County Board, ~~The County~~ of
~~the~~ Winnebago County, Illinois

Attested by:

~~Lori Gummow~~

ATTEST:

County Clerk, ~~The County~~ of ~~the~~
Winnebago, Illinois

EXHIBIT A

REPORT OF PROGRAM ADMINISTRATOR

RED LINE VERSION

EXHIBIT B

FORM OF ADMINISTRATIVE SERVICES AGREEMENT

RED LINE VERSION

EXHIBIT C

FORM OF NOTE

RED LINE VERSION

STATE OF ILLINOIS _____)
_____) SS
COUNTY ~~Board~~ OF WINNEBAGO _____)

CERTIFICATION OF ORDINANCE AND MINUTES

I, the undersigned, do hereby certify that I am the duly qualified and acting County Clerk of The County of Winnebago, Illinois (the "County"), and that as such official I am the keeper of the records and files of the County Board of the County (the "Board").

RED LINE VERSION

Joseph Chiarelli
Chairman of the County Board
of the

I do further certify that the foregoing is a full, true and complete transcript of that portion of the minutes of the meeting of the Board held on the 27th day of May, 2021, insofar as same relates to the adoption of an ordinance numbered _____ entitled:

AN ORDINANCE establishing a Property Assessed Clean Energy (PACE) Program and a PACE Area to finance and/or refinance the acquisition, construction, installation, or modification of energy projects; providing for the issuance of not to exceed \$500,000,000 Taxable PACE Revenue Notes of the County to finance projects pursuant to the County's PACE Program, providing for the payment of said notes, authorizing the sale of said notes to the purchaser thereof; and other matters related thereto

(the "Ordinance"), a true, correct and complete copy of which Ordinance as adopted at said meeting appears in the foregoing transcript of the minutes of said meeting.

I do further certify that the deliberations of the Board on the adoption of said ordinance were taken openly; that the vote on the adoption of said ordinance was taken openly; that said meeting was held at a specified time and place convenient to the public; that notice of said meeting was duly given to all newspapers, radio or television stations and other news media requesting such notice; that an agenda for said meeting was posted on a day which was not a Saturday, Sunday or legal holiday for Illinois municipalities and at least 48 hours in advance of holding said meeting at the location where said meeting was held and at the principal office of the Board; that said agenda described or made specific reference to said ordinance; and that said meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, the Counties Code of the State of Illinois, as amended, and the Property Assessed Clean Energy Act of the State of Illinois, as amended, and that the Board has complied with all of the provisions of said Acts and said Code, and with all of the procedural rules of the Board in the adoption of said ordinance.

IN WITNESS WHEREOF, I hereunto affix my official signature and the seal of the County,
this 27th day of May, 2021.

County Clerk, The County of Winnebago,
Illinois

[SEAL]

RED LINE VERSION