CITY OF FAIRVIEW HEIGHTS
BUSINESS ALLIANCE COMMISSION
TUESDAY, JULY 16, 2019 – 1:30 P.M.
MEETING ROOM A
FAIRVIEW HEIGHTS CITY HALL
10025 BUNKUM ROAD
AGENDA

1. CALL TO ORDER

2. CITIZENS’ COMMENTS

3. APPROVAL OF MINUTES – JUNE 18, 2019

4. UPDATE ON TAX INCREMENT FINANCE (TIF) DISTRICTS

5. PROPOSAL TO AUTHORIZE PACE FINANCING
   a. DRAFT Ordinance – Establishing a Property Assessed Clean Energy (PACE) area and establishing a PACE program to finance or refinance construction and installation of energy projects; and other matters related thereto
   b. DRAFT Memorandum of Understanding – by and between City of Fairview heights, Illinois and Sustainable Solutions Funding, LLC

6. DIRECTOR’S REPORT

7. UPDATE ON SALES TAX REVENUES

8. PLANNING FOR NEXT MEETING – AUGUST 20, 2019

9. ADJOURN
THE CITY OF FAIRVIEW HEIGHTS
BUSINESS ALLIANCE COMMISSION (BAC)
Tuesday, June 18, 2019 – 1:30 p.m.
Meeting Room A
10025 Bunkum Road, Fairview Heights, IL

Committee Members in attendance – Charles Daily, Richard Avdoian, Don Barkley, Robert Triplet, Samantha Carter, Michael Hagen, Van Johnson, Charles Kassly

Committee Members absent – Bill Poletti

Other Aldermen and Elected Officials in attendance – Pat Peck

Staff in attendance – Paul Ellis

Recorder – Wendi Gorney

Call to Order
Charles Daily called the meeting to order at 1:31 p.m.

Public Participation
Amy Kempfer

Approval of Minutes
Don Barkley made a motion to approve the April 16, 2019 minutes. Seconded by Richard Avdoian. Motion passed on voice vote.

Economic Development Director’s Report
Director Paul Ellis presented his report. The Commission discussed the following:

• PACE financing – Property Assessed Clean Energy program. Puts financing together for solar panels, geothermal, HVAC Systems, etc. for businesses. Many of these programs exist in the Chicago area, but we have the opportunity to be the first south of Chicago. Our intention is to implement this program at the Sears and Fortel’s locations. Tom Appelbaum, with Sustainable Solutions Funding, LLC, will be the program administrator in the St. Louis market.

• MEBI – has received a $100,000 grant from the IL General Assembly (active in July). The group will be applying for another grant to be applied to furnishings and fixtures. A significant amount of support funding has been received from local banks and foundations. The mall location will likely open in September. We intend to stay there about 1 year, then move to a permanent location once we find one and renovate it.

• Economic Development Strategy – New reports have been printed and distributed to all members. Their next meeting is Friday, June 21st. Extra copies of this report are available, just notify Paul if you are interested.

• Here Today – a lease has been signed and work has begun to renovate the property. Hoping to achieve three times as much tax revenue with the new tenant.

• Lincoln Place – a new clothing store will be opening soon in that center.

• Urban Air – plans to open the end of August or early September.

• Toys R Us – There are competing letters of intent on this location.
- Babies R Us – still working on tenants for this location.
- BobCat – the deal to move east fell through and they would really like to stay in Fairview Heights. They require 10 acres, I-64 visibility and access. Paul is working with them to find a new location.
- Restaurants – Very competitive industry right now. Paul met with the landowner of Smokey Bones while in Las Vegas. Smokey Bones will be closing numerous stores, but some are still open. They are waiting for all stores to close so they can offer them all at the same time as a package.
- Marketplace – Paul is working with the leaders of DLC and changes are, hopefully, coming soon.
- Lincoln Trail – BAP may need to be revised. Many business owners are interested in it but it is too lengthy and confusing so they are discouraged and don’t follow through with the amount of paperwork.
- Lodging Roundtable – Met with WWT Raceway this week. Scott Winter is growing their events and sending people to Fairview Heights for lodging and entertainment.
- We have some tourism money we plan to use on billboards supporting Salute to the Arts, local shopping and maybe partnering with the mall.
- August 29, 2019 - We will be hosting an ICSC event at the Sheraton from 11am – 3pm. This event is for regional retail developers and economic developers. Wade Laufenberg, from Beall’s/Burke’s Outlet, will be speaking at the event.
- H&M – opens September 22, 2019
- Michael Hagen – Met with Rep. Mike Bost and walked the property of St. Clair Square. Discussed a tenant mix, overview of mall, how to help the mall and retailers’ infrastructure and improvements with federal money.
- Sales Tax Report – down, but attributed to overall number of closed stores combined with poor weather conditions last winter. Paul is working to broaden our base.
- Van stated that many small retailers are having a hard time negotiating affordable rents with landlords. Michael agreed and noted that many of new business owners are not well prepared and may need more knowledge to handle owning business better. Richard suggested having a meeting to bring business people together to discuss these needs and try to problem solve together.
- Lincoln Trail TIFF – looking to revamp the application program. We have granted only a small amount of the money available. Chas suggested we get updates on these figures for the next meeting.
- Pat asked about the current state of the Sears location. Committee was informed that the broker that owned it and the real estate agency have been meeting often, but Sears won’t come down on their extremely high price. They have a group wanting to buy and renovate, but the price is far too inflated for the area.

**Monthly Revenue Reports**
Director Ellis presented the sales tax report. The City is down -3.3%, or -$22,100.47 and year to date is down -3.8%, or -$85,097.69.

Finance must fix the blank space for March 2015 for the next report.

The next meeting is scheduled for July 16, 2019 at 1:30 p.m.

A motion to adjourn was make by Richard Avdoian and seconded by Don Barkley.
Adjourned at 2:52 p.m.

Submitted By:

__________________________
Recorder
CITY OF FAIRVIEW HEIGHTS
PACE PROGRAM

ASSESSMENT CONTRACT

(The above space for recorder's use only)

THIS ASSESSMENT CONTRACT (this “Contract”), dated as of the Effective Date (as defined below), is by and between the City of Fairview Heights, a municipal corporation and home rule unit of local government of the State of Illinois (the “City”) and person or persons as the titleholder or owner of the beneficial interest set forth on Exhibit A (the “Record Owner”) in the property described on Exhibit A (the “Property”).

RECITALS

WHEREAS, the City has conducted the proceedings required by Section 15 of the Property Assessed Clean Energy Act, 50 ILCS 50/1 et seq. (the “Act”) and established a property assessed clean energy program (the “PACE Program”) within the jurisdictional boundaries of the City (the “PACE Area”) to allow the financing or refinancing of certain “energy projects” (as defined in the Act), funded through the sale of bonds, subject to the Act [or the Special Assessment Supplemental Bond and Procedures Act, 50 ILCS 460/1 et seq., or alternatively,] through the sale of bonds pursuant to subsection (d) of Section 825-65 of the Illinois Finance Authority Act, 20 ILCS 3501/801-1 et seq. (the “Authority Act”), which bonds will be secured through the levy of certain special assessments pursuant to “assessment contracts” (as defined in the Act) on property (as defined in the Act) benefitted by such energy projects;

WHEREAS, the Act provides that a “record owner” (as defined in the Act) of property within the PACE Area may apply to the City or its “program administrator” (as defined in the Act) to facilitate access to capital to provide funding for an energy project and that the City may enter into an assessment contract with a record owner of property to finance or refinance one or more energy projects on the property, which assessment contract provides for the repayment of the financed amount of the cost of an energy project through assessments on the property benefitted;

WHEREAS, the Property is located in the PACE Area established by the City as of the last date entered with the signatures of the parties below (the “Effective Date”);

WHEREAS, the Record Owner has requested the City enter into this Contract and the City has verified the information required by Section 25(c) of the Act as further described herein;
WHEREAS, the City has appointed Loop-Counterpointe PACE LLC, a Delaware limited liability company, as a program administrator (together with any successors thereto, the “Program Administrator”) for the PACE Program as it pertains to this Contract;

WHEREAS, the Record Owner has completed an application (the “PACE Project Application”) for financing under the PACE Program (“PACE Funding”) for the energy project, including the construction and installation thereof, described in Exhibit A (the “Project”) and has satisfied the PACE Program requirements, including without limitation, obtaining a written consent from any and all holders of mortgages recorded against the Property, and the Program Administrator has issued an approval of the Record Owner’s PACE Project Application, all in accordance with the Program Guidebook administered by the Program Administrator with respect to the PACE Program and in effect on the date hereof (the “Program Guidebook”);

WHEREAS, the Program Administrator and the Record Owner may request that the Illinois Finance Authority, a body politic and corporate duly organized and validly existing under and by virtue of the laws of the State of Illinois (the “Authority”), finance the Project through the sale of bonds pursuant to subsection (d) of Section 825-65 of the Authority Act, and if applicable, that a Warehouse Fund (as defined in the Act) provide interim financing prior to the issuance of bonds by the Authority; and

WHEREAS, pursuant to the Act, the City and the Record Owner desire to enter into this Contract, pursuant to which the Record Owner will agree to pay the assessment in order to finance or refinance the Project and the City may agree to assign this Contract in furtherance of providing financing for the Project.

NOW, THEREFORE, in consideration of the foregoing and the material covenants hereinafter contained, the Record Owner and the City formally covenant, agree and bind themselves and their successors and assigns as follows:

AGREEMENT

Section 1. Purpose. The Record Owner and the City are entering into this Contract for the purpose of financing or refinancing the Project.

Section 2. The Property. This Contract relates to the Property. The Record Owner has provided to the City sufficient evidence that the Record Owner is the titleholder or owner of the beneficial interest in the Property and possesses all legal authority necessary to execute this Contract.

Section 3. Assessment; Bonds; Installment; Prepayment; Collection.

(a) The Assessment. The Record Owner hereby freely and willingly agrees that a special assessment in the amount specified in Schedule I (the “Assessment”) shall be levied by the City on the Property pursuant to the Act. The amount of the Assessment shall be the amount specified in Schedule I, which includes an amount to pay all or a portion of the costs of (i) the Project, (ii) incidental expenses, if so specified in Schedule I, (iii) capitalized interest on bonds to be issued or, if applicable, the Warehouse Fund, if so specified in Schedule I, and (iv) funding any required debt service reserve, if so specified in Schedule I (collectively, the “Financing Purposes”).
The Record Owner acknowledges and agrees that the amount of the Assessment does not exceed the special benefit conferred on the Property by the Financing Purposes thereon.

(b) **Bonds.** The City hereby determines that bonds, which may be serial bonds, term bonds or both, shall be issued (i) by the City pursuant to the Special Assessment Supplemental Bond and Procedures Act, 50 ILCS 460/1 et seq. or (ii) upon assignment of this Contract to the Authority, by the Authority pursuant to the Authority Act, all in accordance with the Act (the “Bonds”) and shall be secured by the Assessment to pay the cost of the Financing Purposes, and that, if applicable, interim financing prior to the issuance of Bonds may be provided through a Warehouse Fund.

(c) **Interest; Assessment Installments.** Interest on the Assessment shall begin to run from the date the Bonds are issued or, if applicable, interim financing from the Warehouse Fund is issued, and shall be computed at the rate specified in Schedule I. The unpaid Assessment shall be payable in installments of principal and interest as set forth in Schedule I.

(d) **Collection.** The annual proportion of the Assessment coming due in any year, together with the annual interest thereon, shall be payable in the same manner and at the same time and in the same installments as the general taxes on the Property are payable [or as otherwise provided in Schedule I attached hereto], and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general taxes on the Property. The City may delegate the authority to bill and collect the Assessment to the Program Administrator, or its designee.

(e) **Administrative Expenses.** In addition to the installments of the Assessment described in subsection (c) of this Section, the City or any Assignee (as defined below) may (or may direct the Program Administrator on behalf of the City or any such Assignee, as the case may be, to), in accordance with the Act, add thereto amounts in order to pay for the costs of collecting the Assessment, the annual administration of the Assessment, the annual administration of the Bonds or the Warehouse Fund and other administrative costs (the “Annual Assessment Administrative Fee”), if so specified in Schedule I.

(f) **Prepayment of the Assessment.** The Assessment may be prepaid, in whole or in any amount of at least the minimum set forth in Schedule I, at any time upon the payment of (i) the amount of any delinquent installments of principal or interest on the Assessment, together with penalties accrued to the date of prepayment, plus (ii) the whole or, subject to the minimum amount set forth in this subsection, a portion of the unpaid non-delinquent principal of the Assessment (the “Assessment Prepayment Amount”), plus (iii) interest on the Assessment Prepayment Amount to the redemption date occurring at least 30 days following the date the prepayment is made, plus (iv) an amount equal to the redemption premium, if any, set forth on Schedule I, plus (v) a reasonable fee, if charged by the Authority or Program Administrator, for the cost of administering the prepayment and the redemption of bonds.

(g) **No Reduction or Offset.** The Record Owner hereby acknowledges and agrees that the Assessment will not be subject to reduction, offset or credit of any kind in the event that the Project fails to perform in any way or for any reason.
(h) **No Acceleration; Survival.** Amounts due under the Assessment will not accelerate upon a default or late payment or enforcement of remedies under this Contract and the Assessment, the lien thereof and the obligation to pay Assessment installment when they become due shall survive any such event and continue until paid in full.

**Section 4. Record Owner’s Representations and Warranties**

The Record Owner represents and warrants to the City and each Assignee (as hereinafter defined), which representations and warranties shall be true and correct as of the Effective Date and at all times thereafter as follows:

(a) **Organization and Authority.** The Record Owner, if a legal entity, is duly organized, validly existing and in good standing in the state of its organization and with authority to do business under the laws of the State of Illinois. The Record Owner has all necessary power and authority to own the Property and to conduct its business and enter into the transactions contemplated hereby. The Record Owner has the right to enter into and perform this Contract, and the execution, delivery and performance of this Contract and each and every document specified in the List of Documents contained in Exhibit A executed in connection therewith (collectively, the “Transaction Documents”) have been duly authorized, executed and delivered and constitute valid and binding obligations of the Record Owner, each enforceable in accordance with its terms, and will not violate any applicable law or result in the creation of a lien against the Property except as contemplated by this Contract.

(b) **Financial Statements.** All financial statements delivered to the City or the Program Administrator are true and correct, have been prepared in accordance with United States generally accepted accounting principles consistently applied, fairly represent the financial condition of the Record Owner as of the date thereof, and no material adverse change has occurred in the financial condition presented therein since such date.

(c) **No Litigation.** There are no actions, suits or proceedings pending or, to the knowledge of the Record Owner, threatened, against or affecting it or the Property which could materially adversely affect the Record Owner, its financial condition, the Property or the construction of the Project or the Record Owner’s ability to satisfy its obligations under this Contract and any of the Transaction Documents, if applicable.

(d) **Title.** The Record Owner has good and insurable title to the Property. Except as set forth on Exhibit B (“Permitted Liens”), there are no 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.

(e) **Property-Based Debt; Taxes.** The Record Owner is not in default under, and has received no notices of default, under any property-based debt that has not been otherwise cured. The Record Owner is current on all mortgage debt on the Property, has not had an Insolvency Event in the last two (2) years from the date hereof, and the Property is not the subject of any Insolvency Event. There are no delinquent taxes, special assessments, or water or sewer charges on the Property. There are no delinquent assessments on the Property in a property assessed clean energy program (including the Program).
(f) **Compliance With Laws.** The Record Owner has complied with, and will continue to comply with, all applicable statutes, regulations and ordinances in connection with the Property and construction of the Project. All permits, consents, approvals and authorizations required to be issued by any governmental body (collectively, the “Permits”) necessary for (a) the construction of the Project in accordance with the plans and specifications (together, the “Plans”) submitted by the Record Owner; (b) the construction, connection and operation of all utilities necessary to service the Project; and (c) the construction and use of all roadways, driveways, curb cuts and other vehicular or other access to and egress from the Project, as shown on the Plans either (i) have been obtained, are valid, are in full force and effect and have been complied with by the Record Owner in all respects; or (ii) will be obtained, will be valid, will be in full force and effect prior to the initiation of construction of the Project, and Record Owner will be in compliance therewith in all respects prior to any “permitted assignee” (as defined in the Act) to which this Contract has been assigned (the “Assignee”) disbursing any Bond proceeds or interim financing provided by a Warehouse Fund, if applicable. Construction of the Project in accordance with the Plans will comply with applicable zoning, use, building or other applicable codes, laws, regulations, ordinances and Permits and any restrictive covenants affecting the Property.

(g) **Approval of Plans and Budgets.** Any Plans submitted will be a true and accurate reflection of the Project (when completed) and have been approved as required by all governmental bodies or agencies having jurisdiction over the Project or will be approved prior to the first disbursement request. The budget for construction of the Project (the “Budget”) is an accurate current budget of all costs necessary to construct the Project in accordance with the Plans and is attached to the construction contract(s) to which the Record Owner is a party and described on Exhibit A pertaining to the construction and installation of the Project (the “Construction Contract”). The cost of construction of the Project is not expected to exceed the cost therefor set forth in the Budget. The Record Owner is responsible for any costs in excess of the Budget.

(h) **Contractors.** All work requiring a license under any applicable law to acquire, construct, install, or modify the Project has been and will be performed by licensed contractors that have agreed to adhere to the City’s or the Program Administrator’s terms and conditions. All such contractors have signed a written acknowledgment that the City or its Program Administrator will not authorize final payment to such contractor until the City has received written confirmation from the Record Owner that the Project was properly acquired, constructed, installed or modified and is operating as intended.

(i) **Mortgage Holder Consent.** The Record Owner represents and warrants that the Record Owner has (i) disclosed to the City or the Program Administrator, the identities of all persons, if any, that hold mortgage liens against the Property (whether recorded or unrecorded) that may be affected by the Assessment; (ii) has obtained and delivered to the City or the Program Administrator the written consent of all such persons to the Assessment; and (iii) to the Record Owner’s knowledge, no such consent has been withdrawn or revoked.

(j) **Insurance.** The Record Owner has provided to the City or the Program Administrator satisfactory evidence of current insurance policies on the Property. Such policies shall meet the specifications set forth in accordance with the Program Guidebook incorporated herein by reference but, notwithstanding such specifications, to the extent Bonds are issued under
the Authority Act, the Authority, any Bond Trustee and any Warehouse Fund shall be named as an additional insured (mortgagee/loss payee) on all insurance policies required hereunder.

(k) **PACE Project Application.** All representations, warranties, statements, exhibits, instruments and other documents contained in or included as a part of the PACE Project Application are true, correct and complete as of the Effective Date. The Project constitutes an “energy project” and the Property constitutes “property” as each term is defined in the Act.

(l) **No Impairment.** No fraud, error, omission, misrepresentation, negligence or similar occurrence with respect to the Property, Plans, Budget, Construction Contract or Project has taken place on the part of the Record Owner or any other person, including, without limitation, any appraiser, title company, closing or settlement agent, realtor, builder or developer or any other party involved in the Property, Plans, Budget, Construction Contract or Project, that would impair in any way the rights of the City or the Program Administrator in the Property, Plans, Budget, Construction Contract or Project or that violated applicable law.

(m) **Environmental Matters.** Except as shown on Schedule II attached hereto (the “Environmental Schedule”), there are no underground storage tanks located on the Property; there is no past or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property (which has not been fully remediated in accordance with environmental laws); there is no environmental remediation required (or anticipated to be required) with respect to the Property; and Record Owner does not know of, and has not received, any written or oral notice or other communication from any person (including but not limited to a governmental entity) relating to hazardous substances or remediation thereof, of possible liability of any person pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with the foregoing.

(n) **Property Value.** The aggregate amount to be financed or refinanced hereunder does not exceed 25% in relation to the greater of (i) the value of the Property as determined by the office of the applicable county assessor; or (ii) the value of the Property as determined by an appraisal conducted by a licensed appraiser.

**Section 5. Record Owner Covenants**

The Record Owner hereby covenants and agrees as follows:

(a) **Maintenance of Property.** The Record Owner shall, at all times, maintain the Property and, after construction, the Project. The Record Owner shall pay when due all taxes, assessments (including the Assessment), water charges, sewer charges and all other charges levied on or against the Property, and upon written request, submit to the City or the Program Administrator official receipts evidencing such payments.

(b) **Construction Start and Completion.** The Record Owner shall commence construction of the Project and shall diligently proceed with construction of the Project in accordance with the approved Plans and Budget and in a good, substantial and workmanlike manner in accordance with the Construction Contract and all applicable laws, ordinances, codes,
rules and regulations. [Construction of the Project shall be completed on or prior to the Outside Completion Date as defined in Exhibit A, if applicable.]

(c) **Protection Against Liens.** Except for any Permitted Liens, the Record Owner shall promptly pay and discharge all claims for labor performed and material and services furnished in connection with construction of the Project, and take all other steps necessary to prevent the assertion of claims or liens either against the Property or the Project, other than (i) the claims and lien provided herein, (ii) liens, if any, for taxes imposed by any governmental authority not yet due or delinquent, and (iii) such other title and survey exceptions as the City or the Program Administrator has approved or may approve in writing in its sole discretion.

(d) **Periodic Reports/Certifications.** Upon request by the City or the Program Administrator during the period construction of the Project begins on the Property until the Project has been accepted as completed pursuant to the terms of the Construction Contract, the Record Owner shall provide to the City or the Program Administrator a written statement, certified as true, correct and complete, setting forth the status of the Project, including an updated schedule for completion of construction of the Project. Such certification shall be in such form and with such detail as the City or the Program Administrator shall specify and may be included in completion certificate(s) as set forth in the Guidebook.

(e) **Notice of Claims; Adverse Matters.** The Record Owner shall promptly notify the City or the Program Administrator in writing of any potential Insolvency Event and all pending or threatened litigation or other matters that may materially and adversely affect the Property or Record Owner’s ability to meet its obligations under the Transaction Documents or otherwise with respect to the Financing Purposes. “Insolvency Event” shall mean the Record Owner has (i) consented to the appointment of a conservator or receiver or liquidator in any insolvency, bankruptcy, readjustment of debt, marshalling of assets and liabilities or similar proceeding or of relating to the Record Owner or relating to all or substantially all of such Record Owner’s property, (ii) fails to pay its debts as they become due and such failure has not been cured within thirty (30) days of the event; (iii) admitted in writing its inability to pay its debts as they become due, (iv) filed a petition to take advantage of any applicable insolvency or reorganization statute, (v) made an assignment for the benefit of its creditors, (vi) has filed against it a petition for involuntary bankruptcy or some other involuntary insolvency proceeding which is not dismissed within thirty (30) days, or (vii) voluntarily suspended payment of its obligations.

(f) **Waiver and Release of Claims Against City, the Program Administrator, the Authority and Related Parties.** For and in consideration of the City’s execution and delivery of this Contract and the Authority and, if applicable, the Warehouse Fund providing capital to finance the Project, Record Owner (for itself and for any successor-in-interest to the Property and for anyone claiming by, through or under Record Owner, including without limitation, heirs, personal representatives, mortgagees and transferees), hereby waive the right to recover from the City, the Program Administrator, the Authority, the Warehouse Fund and any and all members, officers, officials, agents, bond trustee, employees, attorneys and representatives of any of them, as well as their successors and assigns (collectively, the “Financing Parties”), and fully and irrevocably release the Financing Parties from, any and all claims, obligations, liabilities, causes of action or damages (including attorneys’ fees and court costs), that Record Owner may now have or hereafter acquire against any of the Financing Parties and accruing from or related to (i) this Contract, (ii)
the disbursement of Bond proceeds or interim financing provided by a Warehouse Fund, if applicable, (iii) the levy and collection of the Assessment, (iv) the imposition of the lien of the Assessment, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings, energy production, water conservation or other performance outcomes resulting from the Project or any assured performance guaranty, (xii) the workmanship of any third parties under any agreements including, without limitation, any Construction Contract, and (xiii) any other matter with respect to the PACE Program (collectively, the “Liabilities”).

This release includes claims, obligations, liabilities, causes of action and damages of which the Record Owner is not presently aware or which the Record Owner does not suspect to exist which, if known by the Record Owner, would materially affect Record Owner’s release of the Financing Parties. Notwithstanding the foregoing, Record Owner’s releases under this Section shall not extend to Liabilities arising from any Financing Parties willful misconduct. The Record Owner acknowledges that the Financing Parties established the PACE Program solely for the purpose of facilitating financing of energy projects arranged by owners of commercial property located in the PACE Area. The Financing Parties are not responsible for the selection, management and/or supervision of the Project, the Project’s performance, the Construction Contracts or any assumed performance guaranty. Any issues related to performance of the Project should be discussed with chosen contractors, installers, manufacturers and/or distributors involved with the Project. The waivers and releases by Record Owner contained in this Section shall survive the disbursement of any Bond proceeds, interim financing provided by a Warehouse Fund, if applicable, or any portion thereof, the transfer or sale of the Property by Record Owner and the termination of this Contract.

Notwithstanding the foregoing or anything to the contrary contained in this Contract, the waiver and release provided for in this Section shall not bar the Record Owner, its successors-in-interest to the Property, from bringing an equitable action against the City for specific performance of its duties and obligations under this Contract, or to enjoin or prevent the violation of this Contract thereby, it being understood and agreed, however, that the Financing Parties shall not be liable for money damages or costs of such equitable proceeding except insofar and to the extent such Liabilities arise from their willful misconduct.

(g) **Engineering Commissioning and Verification.**

(i) If the PACE Funding exceeds $2 million, then, to verify that the Project is installed and performs according to projections modeled and reported in an Energy Audit, Energy Review or Renewable Energy Feasibility Study provided by the Record Owner and accepted by the Program Administrator to satisfy the requirements of the PACE Program and detailed in the Technical Project Review (“TPR”) submitted as part of the PACE Project Application, engineering commissioning and verification (“ECV”) of the Project shall be performed according to the requirements set forth in the Program Guidebook.
(ii) Upon completion of ECV, the Record Owner shall submit a post-construction ECV report to the City or the Program Administrator in a form provided by the Program Administrator. This report shall contain:

(1) A statement that systems have been completed in accordance with the Project Report and Project contract documents, and that the systems are performing as expected; and

(2) Identification and discussion of any substitutions, compromises, or variances between the final design intent, contract documents and as-built conditions.

Section 6. **Lien; Foreclosure.**

(a) **Lien.** The Assessment, and each installment thereof and the interest and any penalties thereon shall constitute a lien against the Property until they are paid, which lien shall be coequal to and independent of the lien for general taxes.

(b) **Foreclosure.** The Record Owner acknowledges and agrees that if any Assessment installment is not paid when due, the City shall have all rights and remedies for such non-payment as it does with respect to delinquent property taxes and other delinquent special assessments as set forth in Article 9 of the Illinois Municipal Code, including the lien, sale, and foreclosure remedies described in that Article (“Enforcement Remedy”). Any Assignee shall have and possess the delegable powers and rights at law or in equity as the City would have with respect to an Enforcement Remedy with regard to (i) the precedence and priority of liens evidenced by this Contract, (ii) the accrual of interest, and (iii) the fees and expenses of collection, and shall have the right to enforce such liens through an Enforcement Remedy. The Record Owner acknowledges that the Assignee may obligate itself, through a covenant with the owners of the Bonds, to exercise an Enforcement Remedy with respect to enforcement of delinquent Assessments under circumstances specified in such covenant.

Section 7. **Financing or Refinancing of the Project.** The parties hereby agree that the net proceeds of the Bonds or interim financing provided by a Warehouse Fund, if applicable, allocable to the Assessment shall be used to finance or refinance the Project.

Section 8. **Term; Contract Runs with the Land; Division.**

(a) Except as otherwise set forth in this Contract, this Contract shall expire upon the final payment or prepayment of the Assessment.

(b) This Contract establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land.

(c) The obligation to pay the Assessment is an obligation of the Property and no agreement or action of the Record Owner shall be competent to impair in any way the rights of the City or the Program Administrator or the rights of any Assignee, including, but not limited to, the right to pursue judicial foreclosure of the Assessment lien or the right to enforce the collection of the Assessment or any installment thereof against the Property.
(d) In the event the Property is divided while the Assessment remains unpaid, the unpaid installments of the Assessment shall be segregated and apportioned by the City or the Program Administrator in accordance with a method selected by it in its good faith judgement.

Section 9. **Recordation of Documents**. The City or the Program Administrator shall record or cause to be recorded in the office of the County Recorder this Contract and any other documents required by applicable law or any Assignee to be recorded.

Section 10. **Notice**. The Record Owner shall provide written notice to any subsequent purchaser of the Property, or a portion thereof, of the obligation to pay the Assessment.

Section 11. **Waivers, Acknowledgment and Contract**.

(a) Since the Assessment is voluntary and imposed, in accordance with the Act, pursuant to this Contract, the Record Owner hereby waives any otherwise applicable requirements of the Special Assessment Supplemental Bond and Procedures Act, or any other provision of Illinois law, for notice or public hearing.

(b) The Record Owner hereby waives its right to appeal or contest the Assessment or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the City undertaken in connection with the PACE Program. The Record Owner hereby agrees that the Record Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation and maintenance of the Project. The Record Owner hereby acknowledges that the Record Owner and its successors in interest to fee title in the Property will be responsible for payment of the Assessment regardless of whether the Project is properly installed, operated, maintained or performs as expected.

(c) The Record Owner hereby agrees that the City is entering into this Contract solely for the purpose of assisting the Record Owner with the financing or refinancing of the Project, and that neither the City nor the Program Administrator has any responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing, maintenance or performance of the Project. The Record Owner hereby certifies to the City that the City has complied with the provisions of Section 25 of the Act. The Record Owner hereby waives the right to recover from and fully and irrevocably releases the Financing Parties from any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney’s fees), relating to the subject matter of this Contract that the Record Owner may now have or hereafter acquire against the Financing Parties.

Section 12. **Indemnification**.

(a) The Record Owner agrees to indemnify, defend, protect, and hold harmless the Financing Parties from and against all losses, Liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all out-of-pocket litigation costs and attorney’s fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with (i) the Record Owner’s participation in the PACE Program, (ii) the Assessment, (iii) the Project, or (iv) any other fact, circumstance or event related to the subject matter of this Contract, regardless of whether such losses, liabilities, claims, damages
(including consequential damages), penalties, fines, forfeitures, costs and expenses (including all out-of-pocket litigation costs and attorney’s fees) accrue before or after the date of this Contract.

(b) The provisions of this Section shall survive the termination of this Contract.

Section 13. **Right to Inspect Property.** The Record Owner hereby grants the City, the Program Administrator, the Authority, the Bond trustee, the Warehouse Fund and their respective agents and representatives the right to enter at any reasonable time, upon reasonable notice, to inspect the Project. The Record Owner further hereby grants the City, the Program Administrator, the Authority, any Bond trustee, the Warehouse Fund and their respective agents and representatives the right to examine and copy any documentation relating to the Project.

Section 14. **PACE Project Application.** The Record Owner hereby represents and warrants to the City and the Program Administrator, that the information set forth in the PACE Project Application submitted to the City or the Program Administrator in connection with its request for PACE Funding is true and correct as of the date hereof, and that the representations set forth in the PACE Project Application with respect to the Property and the Record Owner are true and correct as of the date hereof as if made on the date hereof.

Section 15. **Amendment.** This Contract may be modified or amended only by the written agreement of the City (or its Assignee, as applicable) and the Record Owner and the consent of the Assignee, if any.

Section 16. **Binding Effect; Assignment.** This Contract inures to the benefit of and is binding upon the City and the Record Owner and its respective successors and assigns. The City has the right to assign any or all of its rights and obligations under this Contract without the consent of the Record Owner. Each of the Program Administrator, the Authority (either directly or via an intermediate assignment), any Capital Provider (either directly or via an intermediate assignment), any Bond trustee (either directly or via an intermediate assignment) or the Warehouse Fund shall be a “permitted assignee” (as defined in the Act) for any purpose hereunder.

Section 17. **Exhibits.** Exhibit A, Schedule I and Schedule II attached to this Contract are incorporated into this Contract by this reference as if set forth in their entirety in this Contract.

Section 18. **Severability.** If any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Contract.

Section 19. **Corrective Instruments.** The City (or its Assignee, as applicable) and the Record Owner, with the consent of the Assignee, if any, shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Contract; provided, however, the prior written consent of the Authority shall be obtained in connection with any such amendment or supplement if Bonds are issued through the Authority, pursuant to subsection (d) of Section 825-65 of the Authority Act; provided, further, however, if applicable, the prior written consent of the Warehouse Fund shall be obtained in connection with any such amendment or supplement if funding by the Warehouse Fund is outstanding.
Section 20.   **Governing Law: Venue.** This Contract shall be construed in accordance with and governed by the laws of the State of Illinois applicable to contracts made and performed in the State of Illinois. This Contract shall be enforceable in the State of Illinois, and any action arising hereunder shall (unless waived by the City in writing) be filed and maintained in the Circuit Court of St. Clair County; provided, however, that actions to foreclose delinquent installments of the Assessment shall be filed and maintained in the Circuit Court of the County identified in Exhibit A.

Section 21.   **Counterparts.** This Contract may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 22.   **Monitoring and Recording of Telephone Calls.** The City or the Program Administrator may monitor and/or record telephone calls for security and customer service purposes. By agreeing to this Contract, the Record Owner agrees to have his, her or its telephone calls with the City or the Program Administrator recorded.

Section 23.   **Electronic Signatures.**

(a) The parties hereto acknowledge and agree that this Contract may be executed by one or more electronic means (“Electronic Signatures”). Each party hereto agrees that Electronic Signatures provided by such party shall constitute effective execution and delivery of this Contract by such party to all other parties to or relying on this Contract. Each party hereto agrees that Electronic Signatures shall constitute complete and satisfactory evidence of the intent of such party to be bound by those signatures and by the terms and conditions of this Contract as signed. Each party hereto agrees that Electronic Signatures shall be deemed to be original signatures for all purposes.

(b) Each party hereto agrees to accept Electronic Signatures provided by any and all other parties to this Contract as (i) full and sufficient intent by such parties to be bound hereunder, (ii) effective execution and delivery of this Contract, and (iii) constituting this Contract an original for all purposes, without the necessity for any manually signed copies to be provided, maintained or to exist for back up or for any other purpose.

(c) If Electronic Signatures are used to execute this Contract, each party hereto hereby accepts the terms of, and intends and does sign, this Contract by its Electronic Signature hereto.

Section 24.   **Transaction Documents.**

(a) The Record Owner acknowledges and agrees that the entire agreement between Record Owner and the City includes the Transaction Documents.

(b) By executing this Contract, the Record Owner acknowledges and agrees that:

   (i) The Record Owner has had sufficient time to review and has reviewed each of the Transaction Documents and has had the opportunity to ask any questions of the City, the Program Administrator, or the Assignee that Record Owner may have regarding such Transaction Documents;
(ii) The Record Owner acknowledges receipt of and has reviewed, understands and agrees to each and every additional requirement and term contained in the Program Guidebook; and

(iii) The Record Owner has reviewed, understands, agrees to and affirms each and every representation and warranty contained in the Record Owner’s PACE Application and the Program Guidebook.

Section 25. Execution and Return of Contract. The Record Owner must execute and return this Contract to the City or the Program Administrator at the address set forth in the “Notice Information” section of Exhibit A so that it is received by the City or the Program Administrator not later than the expiration date set forth on Exhibit A. If the Record Owner fails to return this Contract so executed to the City or the Program Administrator by the expiration date, the City reserves the right to require the Record Owner to enter into a new Contract. The signature of each person signing as or on behalf of the Record Owner must be notarized by a duly licensed notary unless executed by Electronic Signatures.
IN WITNESS WHEREOF, the City and the Record Owner have caused this Contract to be executed in their respective names by their duly authorized representatives, all as of the Effective Date.

**Record Owner:**

__________________________________________

____________________, Signature

Date: _______________________________

Month/Day/Year

STATE OF _____)

COUNTY OF _____)

I, ________________________, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT ____________________________, the __________ of ____________, a ____________, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ____________, appeared before me this day in person and acknowledged that ____ signed and delivered the said instrument, pursuant to authority given by said ____________, as _____ own free and voluntary act, and as the free and voluntary act of the municipal corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of ________________, _____.

______________________________

Notary Public

My Commission Expires: (SEAL)
IN WITNESS WHEREOF, the City and the Record Owner have caused this Contract to be executed in their respective names by their duly authorized representatives, all as of the Effective Date.

City: Authorized Signatory

________________________________________
Name (Please Print)

________________________________________
Signature

________________________________________
Date of Execution

STATE OF ILLINOIS  )
COUNTY OF ST. CLAIR  )

I, ________________________, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT ________________________________, the ___________ of the City of Fairview Heights, a municipal corporation and home rule unit of the State of Illinois, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such __________, appeared before me this day in person and acknowledged that ____ signed and delivered the said instrument, pursuant to authority given by said municipal corporation, as _____ own free and voluntary act, and as the free and voluntary act of the municipal corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of ________________________, ______.

________________________________________
Notary Public

My Commission Expires: (SEAL)
EXHIBIT A

RECORD OWNER, DESCRIPTION OF PROPERTY, DESCRIPTION OF PROJECT, TRANSACTION DOCUMENTS, OUTSIDE COMPLETION DATE, IDENTIFICATION OF CIRCUIT COURT, NOTICE INFORMATION AND EXPIRATION DATE

Record Owner:

Description of Property:

Property Address:
PINS:

County: St. Clair

Description of Project:
The Project consists of the following (check all that apply):

   ____ Energy Efficiency Improvement             _____Alternative Energy Improvement

   ____ Water Use Improvement                     _____Renewable Energy System

Transaction Documents:

Outside Completion Date:

Identification of Circuit Court for Foreclosure Actions:

Expiration Date:
Notice Information:

[PACE Program Notice Information]

[Record Owner Notice Information]

Legal Description:
SCHEDULE I

TERMS OF ASSESSMENT, SCHEDULE OF ANNUAL ASSESSMENT INSTALMENTS, INCLUDING PRINCIPAL, INTEREST AND ANNUAL ASSESSMENT ADMINISTRATIVE FEE

Assessment Amount:

The amount of the Assessment (the “Assessment Amount”), is allocable to the cost of the Project (“Project Cost”), including the cost of materials and labor necessary for installation, permit fees, inspection fees, and other eligible costs, fees and expenses related to the Project, to program administrative fees (“Program Fees), allocable to the costs and fees of operating the Program or other fees that may be incurred by the Record Owner pursuant to the installation and the issuance of Bonds on a specific pro rata basis and the provision of interim financing by the Warehouse Fund, to other incidental fees and expenses (“Other Fees”), allocable to all other capitalized closing fees that may be incurred by the Record Owner to pay administrative costs including property specific legal reviews and recording fees, to capitalized interest (“Capitalized Interest”), to a debt service reserve (if required) (“Debt Service Reserve”), and to any fees charged by a private lender or capital provider (“Capital Provider Fees). The Assessment shall be spread among the PINs in the years and amounts as set forth below [in an amendment to this Schedule which shall be executed when the Bonds are issued].

Interest Rate: ___% per annum

Term: ____ years

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Project Cost</td>
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<tr>
<td>Program Fees</td>
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<tr>
<td>Other Fees</td>
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<td>Capitalized Interest</td>
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<td>Debt Service Reserve (if required)</td>
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<tr>
<td>Capital Provider Fees</td>
<td></td>
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<tr>
<td>Assessment Amount</td>
<td></td>
</tr>
</tbody>
</table>

Annual Administrative Assessment Fees are not included in the Assessment Amount but are due and payable by the Record Owner in addition to the Assessment Installment.

<table>
<thead>
<tr>
<th>Tax Year (commencing January 1)</th>
<th>Interest</th>
<th>Principal</th>
<th>Assessment Installment</th>
<th>Annual Administrative Assessment Fee*</th>
<th>Total Estimated Contractual Assessment Payment</th>
</tr>
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1
Prepayment:

The Assessment may be prepaid, in whole or in part, as described in Section 3(f) of this Contract and as set forth below.

Minimum prepayment amount: $____________

Redemption premium:
SCHEDULE II

ENVIRONMENTAL SCHEDULE

[INSERT “NONE” IF NOT APPLICABLE]
AN ORDINANCE ESTABLISHING A PROPERTY ASSESSED CLEAN ENERGY (PACE) AREA AND ESTABLISHING A PACE PROGRAM TO FINANCE OR REFINANCE CONSTRUCTION AND INSTALLATION OF ENERGY PROJECTS; AND OTHER MATTERS RELATED THERETO

WHEREAS, the City of Fairview Heights, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Illinois, is a home rule unit of local government of the State of Illinois authorized pursuant to the Property Assessed Clean Energy Act, 50 ILCS 50/1 et seq. (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 or refinance energy projects (as defined in the PACE Act); and

WHEREAS, pursuant to an ordinance adopted by the City of Fairview Heights on _______, 2019, _____________________ was designated a program administrator (as defined in the PACE Act) (the “Program Administrator”); 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 City of Fairview Heights now desires to establish the PACE area as the entire corporate limits of the City of Fairview Heights and to establish the PACE Program as further described herein and in the Program Report and to finance or refinance energy projects; and

WHEREAS, any bonds to be issued by the City of Fairview Heights to finance or refinance energy projects subject to the Special Assessment Supplemental Bond and Procedures Act, 50 ILCS 460/1 et seq., all in accordance with the PACE Act, will be approved pursuant to a separate ordinance to be considered at a future meeting of the City of Fairview Heights;

WHEREAS, the PACE Act was amended by Public Act 100-0980, effective January 1, 2019 (the “Amendment”) to, among other things, authorize the Illinois Finance Authority, a body politic and corporate duly organized and validly existing under and by virtue of the laws of the State of Illinois (the “Authority”), to issue bonds to finance or refinance energy projects pursuant to subsection (d) of Section 825-65 of the Illinois Finance Authority Act, 20 ILCS 3501/801-1 et seq. (the “Authority Act”), all in accordance with the PACE Act; and

WHEREAS, pursuant to the Authority Act, the Authority has been granted bond authorization of up to $2,000,000,000 to finance or refinance energy projects.

NOW, THEREFORE, BE IT ORDAINED BY THE City of Fairview Heights OF [INSERT NAME], ILLINOIS, AS FOLLOWS:
Section 1.  Incorporation of the Recitals. The City of Fairview Heights 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. Report of the Program Administrator; Creation of PACE Area. The City of Fairview Heights hereby finds as follows:

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

b. The City of Fairview Heights intends to facilitate access to capital from the Program Administrator approved by the City of Fairview Heights 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 or refinanced, and the description of the proposed arrangements for financing the PACE Program through the Program Administrator 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 City of Fairview Heights hereby approves the Program Report and hereby establishes the PACE area as the corporate limits of the City of Fairview Heights, all as further described in the Program Report.

Section 3. No Public Hearing; Program Established. The City of Fairview Heights 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 4. Assessment Contract. The form of “assessment contract” (as defined in the PACE Act) attached as Appendix A to the Program Report is hereby approved by the City of Fairview Heights. Any one of ________________ (each, an “Authorized Officer”) 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 Appendix 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 [Insert Name] 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 following determination in a written notification to be filed with the City Clerk of Fairview Heights:

i. that the property to be assessed is within the PACE area of the City of Fairview Heights;

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. there are no 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 to a current bankruptcy;

vii. all work requiring a license under any applicable law to make a qualifying improvement shall be performed by a registered contractor that has agreed to adhere to a set of terms and conditions through a process established by the City of Fairview Heights and described in the Program Report;

viii. the contractors to be used have signed a written acknowledgement that the City of Fairview Heights or the Program Administrator will not authorize final payment to the contractor until the City of Fairview Heights or the Program Administrator has received written confirmation from the record owner that the improvement was properly installed and is operating as intended; provided, however, that the contractor retains all legal rights and remedies in the event there is a disagreement with the owner;

ix. that the amount of the assessment in relation to the greater of the assessed value of the property or the appraised value of the property, as determined by a licensed appraiser, does not exceed 25%; and

x. a requirement that an assessment of the existing water or energy use and a modeling of expected monetary savings have been conducted for any proposed project in accordance with the procedures set forth in the Program Report.

xi. at least 30 days before entering into the Assessment Contract with the City of Fairview Heights, the record owner shall have provided to the holders or loan servicers 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 City of Fairview Heights, together with the maximum principal amount to be financed and the maximum assessment necessary to repay that amount, along with a request that the holders or loan servicers 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 City of Fairview Heights shall have been provided with a verified copy or other proof of those notices and the written consent of the existing mortgage holder for the record owner to enter into the Assessment Contract and acknowledging that the existing mortgage will be subordinate to the financing and Assessment Contract and that the City of Fairview Heights or, if
applicable, its permitted assignee (as defined in the PACE Act) can foreclose the property if the assessment is not paid.

**Section 5. 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; and

ii. on and after January 1, 2019, the effective date of the Amendment, in connection with the issuance of bonds by the Authority to finance or refinance energy projects pursuant to subsection (d) of Section 825-65 of the Authority Act, all in accordance with the PACE Act, to negotiate, execute, and deliver one or more agreements assigning to the Authority an Assessment Contract securing such bonds.

**Section 6. 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. No provision of the Municipal Code or violation of any provision of the Municipal Code shall be deemed to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the security for or payment of the instruments authorized by this Ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the Municipal Code.

A copy of this Ordinance shall be published in pamphlet form, filed in the office of the Clerk of the City of Fairview Heights and made available for public inspection.

This Ordinance shall become effective upon its passage and approval.
EXHIBIT A

Report of Program Administrator
CITY OF FAIRVIEW HEIGHTS
PACE PROGRAM

ASSESSMENT CONTRACT

(THE ABOVE SPACE FOR RECORDER'S USE ONLY)

THIS ASSESSMENT CONTRACT (this “Contract”), dated as of the Effective Date (as defined below), is by and between the City of Fairview Heights, a municipal corporation and home rule unit of local government of the State of Illinois (the “City”) and person or persons as the titleholder or owner of the beneficial interest set forth on Exhibit A (the “Record Owner”) in the property described on Exhibit A (the “Property”).

RECITALS

WHEREAS, the City has conducted the proceedings required by Section 15 of the Property Assessed Clean Energy Act, 50 ILCS 50/1 et seq. (the “Act”) and established a property assessed clean energy program (the “PACE Program”) within the jurisdictional boundaries of the City (the “PACE Area”) to allow the financing or refinancing of certain “energy projects” (as defined in the Act), funded through the sale of bonds, subject to the Act [or the Special Assessment Supplemental Bond and Procedures Act, 50 ILCS 460/1 et seq., or alternatively,] through the sale of bonds pursuant to subsection (d) of Section 825-65 of the Illinois Finance Authority Act, 20 ILCS 3501/801-1 et seq. (the “Authority Act”), which bonds will be secured through the levy of certain special assessments pursuant to “assessment contracts” (as defined in the Act) on property (as defined in the Act) benefitted by such energy projects;

WHEREAS, the Act provides that a “record owner” (as defined in the Act) of property within the PACE Area may apply to the City or its “program administrator” (as defined in the Act) to facilitate access to capital to provide funding for an energy project and that the City may enter into an assessment contract with a record owner of property to finance or refinance one or more energy projects on the property, which assessment contract provides for the repayment of the financed amount of the cost of an energy project through assessments on the property benefitted;

WHEREAS, the Property is located in the PACE Area established by the City as of the last date entered with the signatures of the parties below (the “Effective Date”);

WHEREAS, the Record Owner has requested the City enter into this Contract and the City has verified the information required by Section 25(c) of the Act as further described herein;
WHEREAS, the City has appointed Loop-Counterpointe PACE LLC, a Delaware limited liability company, as a program administrator (together with any successors thereto, the “Program Administrator”) for the PACE Program as it pertains to this Contract;

WHEREAS, the Record Owner has completed an application (the “PACE Project Application”) for financing under the PACE Program (“PACE Funding”) for the energy project, including the construction and installation thereof, described in Exhibit A (the “Project”) and has satisfied the PACE Program requirements, including without limitation, obtaining a written consent from any and all holders of mortgages recorded against the Property, and the Program Administrator has issued an approval of the Record Owner’s PACE Project Application, all in accordance with the Program Guidebook administered by the Program Administrator with respect to the PACE Program and in effect on the date hereof (the “Program Guidebook”);

WHEREAS, the Program Administrator and the Record Owner may request that the Illinois Finance Authority, a body politic and corporate duly organized and validly existing under and by virtue of the laws of the State of Illinois (the “Authority”), finance the Project through the sale of bonds pursuant to subsection (d) of Section 825-65 of the Authority Act, and if applicable, that a Warehouse Fund (as defined in the Act) provide interim financing prior to the issuance of bonds by the Authority; and

WHEREAS, pursuant to the Act, the City and the Record Owner desire to enter into this Contract, pursuant to which the Record Owner will agree to pay the assessment in order to finance or refinance the Project and the City may agree to assign this Contract in furtherance of providing financing for the Project.

NOW, THEREFORE, in consideration of the foregoing and the material covenants hereinafter contained, the Record Owner and the City formally covenant, agree and bind themselves and their successors and assigns as follows:

AGREEMENT

Section 1. Purpose. The Record Owner and the City are entering into this Contract for the purpose of financing or refinancing the Project.

Section 2. The Property. This Contract relates to the Property. The Record Owner has provided to the City sufficient evidence that the Record Owner is the titleholder or owner of the beneficial interest in the Property and possesses all legal authority necessary to execute this Contract.

Section 3. Assessment; Bonds; Installment; Prepayment; Collection.

(a) The Assessment. The Record Owner hereby freely and willingly agrees that a special assessment in the amount specified in Schedule I (the “Assessment”) shall be levied by the City on the Property pursuant to the Act. The amount of the Assessment shall be the amount specified in Schedule I, which includes an amount to pay all or a portion of the costs of (i) the Project, (ii) incidental expenses, if so specified in Schedule I, (iii) capitalized interest on bonds to be issued or, if applicable, the Warehouse Fund, if so specified in Schedule I, and (iv) funding any required debt service reserve, if so specified in Schedule I (collectively, the “Financing Purposes”).
The Record Owner acknowledges and agrees that the amount of the Assessment does not exceed the special benefit conferred on the Property by the Financing Purposes thereon.

(b) **Bonds.** The City hereby determines that bonds, which may be serial bonds, term bonds or both, shall be issued (i) by the City pursuant to the Special Assessment Supplemental Bond and Procedures Act, 50 ILCS 460/1 et seq. or (ii) upon assignment of this Contract to the Authority, by the Authority pursuant to the Authority Act, all in accordance with the Act (the “Bonds”) and shall be secured by the Assessment to pay the cost of the Financing Purposes, and that, if applicable, interim financing prior to the issuance of Bonds may be provided through a Warehouse Fund.

(c) **Interest; Assessment Installments.** Interest on the Assessment shall begin to run from the date the Bonds are issued or, if applicable, interim financing from the Warehouse Fund is issued, and shall be computed at the rate specified in Schedule I. The unpaid Assessment shall be payable in installments of principal and interest as set forth in Schedule I.

(d) **Collection.** The annual proportion of the Assessment coming due in any year, together with the annual interest thereon, shall be payable in the same manner and at the same time and in the same installments as the general taxes on the Property are payable [or as otherwise provided in Schedule I attached hereto], and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general taxes on the Property. The City may delegate the authority to bill and collect the Assessment to the Program Administrator, or its designee.

(e) **Administrative Expenses.** In addition to the installments of the Assessment described in subsection (c) of this Section, the City or any Assignee (as defined below) may (or may direct the Program Administrator on behalf of the City or any such Assignee, as the case may be, to), in accordance with the Act, add thereto amounts in order to pay for the costs of collecting the Assessment, the annual administration of the Assessment, the annual administration of the Bonds or the Warehouse Fund and other administrative costs (the “Annual Assessment Administrative Fee”), if so specified in Schedule I.

(f) **Prepayment of the Assessment.** The Assessment may be prepaid, in whole or in any amount of at least the minimum set forth in Schedule I, at any time upon the payment of (i) the amount of any delinquent installments of principal or interest on the Assessment, together with penalties accrued to the date of prepayment, plus (ii) the whole or, subject to the minimum amount set forth in this subsection, a portion of the unpaid non-delinquent principal of the Assessment (the “Assessment Prepayment Amount”), plus (iii) interest on the Assessment Prepayment Amount to the redemption date occurring at least 30 days following the date the prepayment is made, plus (iv) an amount equal to the redemption premium, if any, set forth on Schedule I, plus (v) a reasonable fee, if charged by the Authority or Program Administrator, for the cost of administering the prepayment and the redemption of bonds.

(g) **No Reduction or Offset.** The Record Owner hereby acknowledges and agrees that the Assessment will not be subject to reduction, offset or credit of any kind in the event that the Project fails to perform in any way or for any reason.
(h) **No Acceleration; Survival.** Amounts due under the Assessment will not accelerate upon a default or late payment or enforcement of remedies under this Contract and the Assessment, the lien thereof and the obligation to pay Assessment installment when they become due shall survive any such event and continue until paid in full.

**Section 4. Record Owner’s Representations and Warranties**

The Record Owner represents and warrants to the City and each Assignee (as hereinafter defined), which representations and warranties shall be true and correct as of the Effective Date and at all times thereafter as follows:

(a) **Organization and Authority.** The Record Owner, if a legal entity, is duly organized, validly existing and in good standing in the state of its organization and with authority to do business under the laws of the State of Illinois. The Record Owner has all necessary power and authority to own the Property and to conduct its business and enter into the transactions contemplated hereby. The Record Owner has the right to enter into and perform this Contract, and the execution, delivery and performance of this Contract and each and every document specified in the List of Documents contained in Exhibit A executed in connection therewith (collectively, the “Transaction Documents”) have been duly authorized, executed and delivered and constitute valid and binding obligations of the Record Owner, each enforceable in accordance with its terms, and will not violate any applicable law or result in the creation of a lien against the Property except as contemplated by this Contract.

(b) **Financial Statements.** All financial statements delivered to the City or the Program Administrator are true and correct, have been prepared in accordance with United States generally accepted accounting principles consistently applied, fairly represent the financial condition of the Record Owner as of the date thereof, and no material adverse change has occurred in the financial condition presented therein since such date.

(c) **No Litigation.** There are no actions, suits or proceedings pending or, to the knowledge of the Record Owner, threatened, against or affecting it or the Property which could materially adversely affect the Record Owner, its financial condition, the Property or the construction of the Project or the Record Owner’s ability to satisfy its obligations under this Contract and any of the Transaction Documents, if applicable.

(d) **Title.** The Record Owner has good and insurable title to the Property. Except as set forth on Exhibit B (“Permitted Liens”), there are no 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.

(e) **Property-Based Debt; Taxes.** The Record Owner is not in default under, and has received no notices of default, under any property-based debt that has not been otherwise cured. The Record Owner is current on all mortgage debt on the Property, has not had an Insolvency Event in the last two (2) years from the date hereof, and the Property is not the subject of any Insolvency Event. There are no delinquent taxes, special assessments, or water or sewer charges on the Property. There are no delinquent assessments on the Property in a property assessed clean energy program (including the Program).
(f) **Compliance With Laws.** The Record Owner has complied with, and will continue to comply with, all applicable statutes, regulations and ordinances in connection with the Property and construction of the Project. All permits, consents, approvals and authorizations required to be issued by any governmental body (collectively, the “Permits”) necessary for (a) the construction of the Project in accordance with the plans and specifications (together, the “Plans”) submitted by the Record Owner; (b) the construction, connection and operation of all utilities necessary to service the Project; and (c) the construction and use of all roadways, driveways, curb cuts and other vehicular or other access to and egress from the Project, as shown on the Plans either (i) have been obtained, are valid, are in full force and effect and have been complied with by the Record Owner in all respects; or (ii) will be obtained, will be valid, will be in full force and effect prior to the initiation of construction of the Project, and Record Owner will be in compliance therewith in all respects prior to any “permitted assignee” (as defined in the Act) to which this Contract has been assigned (the “Assignee”) disbursing any Bond proceeds or interim financing provided by a Warehouse Fund, if applicable. Construction of the Project in accordance with the Plans will comply with applicable zoning, use, building or other applicable codes, laws, regulations, ordinances and Permits and any restrictive covenants affecting the Property.

(g) **Approval of Plans and Budgets.** Any Plans submitted will be a true and accurate reflection of the Project (when completed) and have been approved as required by all governmental bodies or agencies having jurisdiction over the Project or will be approved prior to the first disbursement request. The budget for construction of the Project (the “Budget”) is an accurate current budget of all costs necessary to construct the Project in accordance with the Plans and is attached to the construction contract(s) to which the Record Owner is a party and described on Exhibit A pertaining to the construction and installation of the Project (the “Construction Contract”). The cost of construction of the Project is not expected to exceed the cost therefor set forth in the Budget. The Record Owner is responsible for any costs in excess of the Budget.

(h) **Contractors.** All work requiring a license under any applicable law to acquire, construct, install, or modify the Project has been and will be performed by licensed contractors that have agreed to adhere to the City’s or the Program Administrator’s terms and conditions. All such contractors have signed a written acknowledgment that the City or its Program Administrator will not authorize final payment to such contractor until the City has received written confirmation from the Record Owner that the Project was properly acquired, constructed, installed or modified and is operating as intended.

(i) **Mortgage Holder Consent.** The Record Owner represents and warrants that the Record Owner has (i) disclosed to the City or the Program Administrator, the identities of all persons, if any, that hold mortgage liens against the Property (whether recorded or unrecorded) that may be affected by the Assessment; (ii) has obtained and delivered to the City or the Program Administrator the written consent of all such persons to the Assessment; and (iii) to the Record Owner’s knowledge, no such consent has been withdrawn or revoked.

(j) **Insurance.** The Record Owner has provided to the City or the Program Administrator satisfactory evidence of current insurance policies on the Property. Such policies shall meet the specifications set forth in accordance with the Program Guidebook incorporated herein by reference but, notwithstanding such specifications, to the extent Bonds are issued under
the Authority Act, the Authority, any Bond Trustee and any Warehouse Fund shall be named as an additional insured (mortgagee/loss payee) on all insurance policies required hereunder.

(k) *PACE Project Application.* All representations, warranties, statements, exhibits, instruments and other documents contained in or included as a part of the PACE Project Application are true, correct and complete as of the Effective Date. The Project constitutes an “energy project” and the Property constitutes “property” as each term is defined in the Act.

(l) *No Impairment.* No fraud, error, omission, misrepresentation, negligence or similar occurrence with respect to the Property, Plans, Budget, Construction Contract or Project has taken place on the part of the Record Owner or any other person, including, without limitation, any appraiser, title company, closing or settlement agent, realtor, builder or developer or any other party involved in the Property, Plans, Budget, Construction Contract or Project, that would impair in any way the rights of the City or the Program Administrator in the Property, Plans, Budget, Construction Contract or Project or that violated applicable law.

(m) *Environmental Matters.* Except as shown on Schedule II attached hereto (the “Environmental Schedule”), there are no underground storage tanks located on the Property; there is no past or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property (which has not been fully remediated in accordance with environmental laws); there is no environmental remediation required (or anticipated to be required) with respect to the Property; and Record Owner does not know of, and has not received, any written or oral notice or other communication from any person (including but not limited to a governmental entity) relating to hazardous substances or remediation thereof, of possible liability of any person pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with the foregoing.

(n) *Property Value.* The aggregate amount to be financed or refinanced hereunder does not exceed 25% in relation to the greater of (i) the value of the Property as determined by the office of the applicable county assessor; or (ii) the value of the Property as determined by an appraisal conducted by a licensed appraiser.

**Section 5.  Record Owner Covenants**

The Record Owner hereby covenants and agrees as follows:

(a) *Maintenance of Property.* The Record Owner shall, at all times, maintain the Property and, after construction, the Project. The Record Owner shall pay when due all taxes, assessments (including the Assessment), water charges, sewer charges and all other charges levied on or against the Property, and upon written request, submit to the City or the Program Administrator official receipts evidencing such payments.

(b) *Construction Start and Completion.* The Record Owner shall commence construction of the Project and shall diligently proceed with construction of the Project in accordance with the approved Plans and Budget and in a good, substantial and workmanlike manner in accordance with the Construction Contract and all applicable laws, ordinances, codes,
rules and regulations. [Construction of the Project shall be completed on or prior to the Outside Completion Date as defined in Exhibit A, if applicable.]

(c) Protection Against Liens. Except for any Permitted Liens, the Record Owner shall promptly pay and discharge all claims for labor performed and material and services furnished in connection with construction of the Project, and take all other steps necessary to prevent the assertion of claims or liens either against the Property or the Project, other than (i) the claims and lien provided herein, (ii) liens, if any, for taxes imposed by any governmental authority not yet due or delinquent, and (iii) such other title and survey exceptions as the City or the Program Administrator has approved or may approve in writing in its sole discretion.

(d) Periodic Reports/Certifications. Upon request by the City or the Program Administrator during the period construction of the Project begins on the Property until the Project has been accepted as completed pursuant to the terms of the Construction Contract, the Record Owner shall provide to the City or the Program Administrator a written statement, certified as true, correct and complete, setting forth the status of the Project, including an updated schedule for completion of construction of the Project. Such certification shall be in such form and with such detail as the City or the Program Administrator shall specify and may be included in completion certificate(s) as set forth in the Guidebook.

(e) Notice of Claims; Adverse Matters. The Record Owner shall promptly notify the City or the Program Administrator in writing of any potential Insolvency Event and all pending or threatened litigation or other matters that may materially and adversely affect the Property or Record Owner’s ability to meet its obligations under the Transaction Documents or otherwise with respect to the Financing Purposes. “Insolvency Event” shall mean the Record Owner has (i) consented to the appointment of a conservator or receiver or liquidator in any insolvency, bankruptcy, readjustment of debt, marshalling of assets and liabilities or similar proceeding or of relating to the Record Owner or relating to all or substantially all of such Record Owner’s property, (ii) fails to pay its debts as they become due and such failure has not been cured within thirty (30) days of the event; (iii) admitted in writing its inability to pay its debts as they become due, (iv) filed a petition to take advantage of any applicable insolvency or reorganization statute, (v) made an assignment for the benefit of its creditors, (vi) has filed against it a petition for involuntary bankruptcy or some other involuntary insolvency proceeding which is not dismissed within thirty (30) days, or (vii) voluntarily suspended payment of its obligations.

(f) Waiver and Release of Claims Against City, the Program Administrator, the Authority and Related Parties. For and in consideration of the City’s execution and delivery of this Contract and the Authority and, if applicable, the Warehouse Fund providing capital to finance the Project, Record Owner (for itself and for any successor-in-interest to the Property and for anyone claiming by, through or under Record Owner, including without limitation, heirs, personal representatives, mortgagees and transferees), hereby waive the right to recover from the City, the Program Administrator, the Authority, the Warehouse Fund and any and all members, officers, officials, agents, bond trustee, employees, attorneys and representatives of any of them, as well as their successors and assigns (collectively, the “Financing Parties”), and fully and irrevocably release the Financing Parties from, any and all claims, obligations, liabilities, causes of action or damages (including attorneys’ fees and court costs), that Record Owner may now have or hereafter acquire against any of the Financing Parties and accruing from or related to (i) this Contract, (ii)
the disbursement of Bond proceeds or interim financing provided by a Warehouse Fund, if applicable, (iii) the levy and collection of the Assessment, (iv) the imposition of the lien of the Assessment, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings, energy production, water conservation or other performance outcomes resulting from the Project or any assured performance guaranty, (xii) the workmanship of any third parties under any agreements including, without limitation, any Construction Contract, and (xiii) any other matter with respect to the PACE Program (collectively, the “Liabilities”).

This release includes claims, obligations, liabilities, causes of action and damages of which the Record Owner is not presently aware or which the Record Owner does not suspect to exist which, if known by the Record Owner, would materially affect Record Owner’s release of the Financing Parties. Notwithstanding the foregoing, Record Owner’s releases under this Section shall not extend to Liabilities arising from any Financing Parties willful misconduct. The Record Owner acknowledges that the Financing Parties established the PACE Program solely for the purpose of facilitating financing of energy projects arranged by owners of commercial property located in the PACE Area. The Financing Parties are not responsible for the selection, management and/or supervision of the Project, the Project’s performance, the Construction Contracts or any assumed performance guaranty. Any issues related to performance of the Project should be discussed with chosen contractors, installers, manufacturers and/or distributors involved with the Project. The waivers and releases by Record Owner contained in this Section shall survive the disbursement of any Bond proceeds, interim financing provided by a Warehouse Fund, if applicable, or any portion thereof, the transfer or sale of the Property by Record Owner and the termination of this Contract.

Notwithstanding the foregoing or anything to the contrary contained in this Contract, the waiver and release provided for in this Section shall not bar the Record Owner, its successors-in-interest to the Property, from bringing an equitable action against the City for specific performance of its duties and obligations under this Contract, or to enjoin or prevent the violation of this Contract thereby, it being understood and agreed, however, that the Financing Parties shall not be liable for money damages or costs of such equitable proceeding except insofar and to the extent such Liabilities arise from their willful misconduct.

(g) **Engineering Commissioning and Verification.**

(i) If the PACE Funding exceeds $2 million, then, to verify that the Project is installed and performs according to projections modeled and reported in an Energy Audit, Energy Review or Renewable Energy Feasibility Study provided by the Record Owner and accepted by the Program Administrator to satisfy the requirements of the PACE Program and detailed in the Technical Project Review (“TPR”) submitted as part of the PACE Project Application, engineering commissioning and verification (“ECV”) of the Project shall be performed according to the requirements set forth in the Program Guidebook.
Upon completion of ECV, the Record Owner shall submit a post-construction ECV report to the City or the Program Administrator in a form provided by the Program Administrator. This report shall contain:

1. A statement that systems have been completed in accordance with the Project Report and Project contract documents, and that the systems are performing as expected; and

2. Identification and discussion of any substitutions, compromises, or variances between the final design intent, contract documents and as-built conditions.

Section 6. **Lien; Foreclosure**

(a) **Lien.** The Assessment, and each installment thereof and the interest and any penalties thereon shall constitute a lien against the Property until they are paid, which lien shall be coequal to and independent of the lien for general taxes.

(b) **Foreclosure.** The Record Owner acknowledges and agrees that if any Assessment installment is not paid when due, the City shall have all rights and remedies for such non-payment as it does with respect to delinquent property taxes and other delinquent special assessments as set forth in Article 9 of the Illinois Municipal Code, including the lien, sale, and foreclosure remedies described in that Article (“Enforcement Remedy”). Any Assignee shall have and possess the delegable powers and rights at law or in equity as the City would have with respect to an Enforcement Remedy with regard to (i) the precedence and priority of liens evidenced by this Contract, (ii) the accrual of interest, and (iii) the fees and expenses of collection, and shall have the right to enforce such liens through an Enforcement Remedy. The Record Owner acknowledges that the Assignee may obligate itself, through a covenant with the owners of the Bonds, to exercise an Enforcement Remedy with respect to enforcement of delinquent Assessments under circumstances specified in such covenant.

Section 7. **Financing or Refinancing of the Project.** The parties hereby agree that the net proceeds of the Bonds or interim financing provided by a Warehouse Fund, if applicable, allocable to the Assessment shall be used to finance or refinance the Project.

Section 8. **Term; Contract Runs with the Land; Division.**

(a) Except as otherwise set forth in this Contract, this Contract shall expire upon the final payment or prepayment of the Assessment.

(b) This Contract establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land.

(c) The obligation to pay the Assessment is an obligation of the Property and no agreement or action of the Record Owner shall be competent to impair in any way the rights of the City or the Program Administrator or the rights of any Assignee, including, but not limited to, the right to pursue judicial foreclosure of the Assessment lien or the right to enforce the collection of the Assessment or any installment thereof against the Property.
(d) In the event the Property is divided while the Assessment remains unpaid, the unpaid installments of the Assessment shall be segregated and apportioned by the City or the Program Administrator in accordance with a method selected by it in its good faith judgement.

Section 9. **Recordation of Documents.** The City or the Program Administrator shall record or cause to be recorded in the office of the County Recorder this Contract and any other documents required by applicable law or any Assignee to be recorded.

Section 10. **Notice.** The Record Owner shall provide written notice to any subsequent purchaser of the Property, or a portion thereof, of the obligation to pay the Assessment.

Section 11. **Waivers, Acknowledgment and Contract.**

(a) Since the Assessment is voluntary and imposed, in accordance with the Act, pursuant to this Contract, the Record Owner hereby waives any otherwise applicable requirements of the Special Assessment Supplemental Bond and Procedures Act, or any other provision of Illinois law, for notice or public hearing.

(b) The Record Owner hereby waives its right to appeal or contest the Assessment or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the City undertaken in connection with the PACE Program. The Record Owner hereby agrees that the Record Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation and maintenance of the Project. The Record Owner hereby acknowledges that the Record Owner and its successors in interest to fee title in the Property will be responsible for payment of the Assessment regardless of whether the Project is properly installed, operated, maintained or performs as expected.

(c) The Record Owner hereby agrees that the City is entering into this Contract solely for the purpose of assisting the Record Owner with the financing or refinancing of the Project, and that neither the City nor the Program Administrator has any responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing, maintenance or performance of the Project. The Record Owner hereby certifies to the City that the City has complied with the provisions of Section 25 of the Act. The Record Owner hereby waives the right to recover from and fully and irrevocably releases the Financing Parties from any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney’s fees), relating to the subject matter of this Contract that the Record Owner may now have or hereafter acquire against the Financing Parties.

Section 12. **Indemnification.**

(a) The Record Owner agrees to indemnify, defend, protect, and hold harmless the Financing Parties from and against all losses, Liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all out-of-pocket litigation costs and attorney’s fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with (i) the Record Owner’s participation in the PACE Program, (ii) the Assessment, (iii) the Project, or (iv) any other fact, circumstance or event related to the subject matter of this Contract, regardless of whether such losses, liabilities, claims, damages
(including consequential damages), penalties, fines, forfeitures, costs and expenses (including all out-of-pocket litigation costs and attorney’s fees) accrue before or after the date of this Contract.

(b) The provisions of this Section shall survive the termination of this Contract.

Section 13. **Right to Inspect Property.** The Record Owner hereby grants the City, the Program Administrator, the Authority, the Bond trustee, the Warehouse Fund and their respective agents and representatives the right to enter at any reasonable time, upon reasonable notice, to inspect the Project. The Record Owner further hereby grants the City, the Program Administrator, the Authority, any Bond trustee, the Warehouse Fund and their respective agents and representatives the right to examine and copy any documentation relating to the Project.

Section 14. **PACE Project Application.** The Record Owner hereby represents and warrants to the City and the Program Administrator, that the information set forth in the PACE Project Application submitted to the City or the Program Administrator in connection with its request for PACE Funding is true and correct as of the date hereof, and that the representations set forth in the PACE Project Application with respect to the Property and the Record Owner are true and correct as of the date hereof as if made on the date hereof.

Section 15. **Amendment.** This Contract may be modified or amended only by the written agreement of the City (or its Assignee, as applicable) and the Record Owner and the consent of the Assignee, if any.

Section 16. **Binding Effect; Assignment.** This Contract inures to the benefit of and is binding upon the City and the Record Owner and its respective successors and assigns. The City has the right to assign any or all of its rights and obligations under this Contract without the consent of the Record Owner. Each of the Program Administrator, the Authority (either directly or via an intermediate assignment), any Capital Provider (either directly or via an intermediate assignment), any Bond trustee (either directly or via an intermediate assignment) or the Warehouse Fund shall be a “permitted assignee” (as defined in the Act) for any purpose hereunder.

Section 17. **Exhibits.** Exhibit A, Schedule I and Schedule II attached to this Contract are incorporated into this Contract by this reference as if set forth in their entirety in this Contract.

Section 18. **Severability.** If any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Contract.

Section 19. **Corrective Instruments.** The City (or its Assignee, as applicable) and the Record Owner, with the consent of the Assignee, if any, shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Contract; provided, however, the prior written consent of the Authority shall be obtained in connection with any such amendment or supplement if Bonds are issued through the Authority, pursuant to subsection (d) of Section 825-65 of the Authority Act; provided, further, however, if applicable, the prior written consent of the Warehouse Fund shall be obtained in connection with any such amendment or supplement if funding by the Warehouse Fund is outstanding.
Section 20.   **Governing Law: Venue.** This Contract shall be construed in accordance with and governed by the laws of the State of Illinois applicable to contracts made and performed in the State of Illinois. This Contract shall be enforceable in the State of Illinois, and any action arising hereunder shall (unless waived by the City in writing) be filed and maintained in the Circuit Court of St. Clair County; provided, however, that actions to foreclose delinquent installments of the Assessment shall be filed and maintained in the Circuit Court of the County identified in Exhibit A.

Section 21.   **Counterparts.** This Contract may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 22.   **Monitoring and Recording of Telephone Calls.** The City or the Program Administrator may monitor and/or record telephone calls for security and customer service purposes. By agreeing to this Contract, the Record Owner agrees to have his, her or its telephone calls with the City or the Program Administrator recorded.

Section 23.   **Electronic Signatures.**

(a) The parties hereto acknowledge and agree that this Contract may be executed by one or more electronic means (“Electronic Signatures”). Each party hereto agrees that Electronic Signatures provided by such party shall constitute effective execution and delivery of this Contract by such party to all other parties to or relying on this Contract. Each party hereto agrees that Electronic Signatures shall constitute complete and satisfactory evidence of the intent of such party to be bound by those signatures and by the terms and conditions of this Contract as signed. Each party hereto agrees that Electronic Signatures shall be deemed to be original signatures for all purposes.

(b) Each party hereto agrees to accept Electronic Signatures provided by any and all other parties to this Contract as (i) full and sufficient intent by such parties to be bound hereunder, (ii) effective execution and delivery of this Contract, and (iii) constituting this Contract an original for all purposes, without the necessity for any manually signed copies to be provided, maintained or to exist for back up or for any other purpose.

(c) If Electronic Signatures are used to execute this Contract, each party hereto hereby accepts the terms of, and intends and does sign, this Contract by its Electronic Signature hereto.

Section 24.   **Transaction Documents.**

(a) The Record Owner acknowledges and agrees that the entire agreement between Record Owner and the City includes the Transaction Documents.

(b) By executing this Contract, the Record Owner acknowledges and agrees that:

   (i) The Record Owner has had sufficient time to review and has reviewed each of the Transaction Documents and has had the opportunity to ask any questions of the City, the Program Administrator, or the Assignee that Record Owner may have regarding such Transaction Documents;
(ii) The Record Owner acknowledges receipt of and has reviewed, understands and agrees to each and every additional requirement and term contained in the Program Guidebook; and

(iii) The Record Owner has reviewed, understands, agrees to and affirms each and every representation and warranty contained in the Record Owner’s PACE Application and the Program Guidebook.

**Section 25. Execution and Return of Contract.** The Record Owner must execute and return this Contract to the City or the Program Administrator at the address set forth in the “Notice Information” section of Exhibit A so that it is received by the City or the Program Administrator not later than the expiration date set forth on Exhibit A. If the Record Owner fails to return this Contract so executed to the City or the Program Administrator by the expiration date, the City reserves the right to require the Record Owner to enter into a new Contract. The signature of each person signing as or on behalf of the Record Owner must be notarized by a duly licensed notary unless executed by Electronic Signatures.
IN WITNESS WHEREOF, the City and the Record Owner have caused this Contract to be executed in their respective names by their duly authorized representatives, all as of the Effective Date.

Record Owner:

________________________
_______________, Signature

Date: __________________________
Month/Day/Year

STATE OF ______) )
COUNTY OF ______) 

I, ________________________, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT ______________________________, the __________ of __________, a __________, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such __________, appeared before me this day in person and acknowledged that ____ signed and delivered the said instrument, pursuant to authority given by said __________, as ____ own free and voluntary act, and as the free and voluntary act of the municipal corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of ______________________, ______.

________________________________________
Notary Public

My Commission Expires:  (SEAL)
IN WITNESS WHEREOF, the City and the Record Owner have caused this Contract to be executed in their respective names by their duly authorized representatives, all as of the Effective Date.

City: Authorized Signatory

________________________________________
Name (Please Print)

________________________________________
Signature

________________________________________
Date of Execution

STATE OF ILLINOIS  )

COUNTY OF ST. CLAIR  )

I, ________________________, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT ___________________________________, the ___________ of the City of Fairview Heights, a municipal corporation and home rule unit of the State of Illinois, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ___________, appeared before me this day in person and acknowledged that ____ signed and delivered the said instrument, pursuant to authority given by said municipal corporation, as _____ own free and voluntary act, and as the free and voluntary act of the municipal corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of ______________________, ______.

________________________________________
Notary Public

My Commission Expires: (SEAL)
EXHIBIT A

RECORD OWNER, DESCRIPTION OF PROPERTY, DESCRIPTION OF PROJECT, TRANSACTION DOCUMENTS, OUTSIDE COMPLETION DATE, IDENTIFICATION OF CIRCUIT COURT, NOTICE INFORMATION AND EXPIRATION DATE

Record Owner:

Description of Property:

Property Address:
PINS:

County: St. Clair

Description of Project:
The Project consists of the following (check all that apply):

____ Energy Efficiency Improvement _______Alternative Energy Improvement
____ Water Use Improvement _______Renewable Energy System

Transaction Documents:

Outside Completion Date:

Identification of Circuit Court for Foreclosure Actions:

Expiration Date:
Notice Information:

[PACE Program Notice Information]

[Record Owner Notice Information]

Legal Description:
EXHIBIT B

PERMITTED LIENS
SCHEDULE I

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

Assessment Amount:

The amount of the Assessment (the “Assessment Amount”), is allocable to the cost of the Project (“Project Cost”), including the cost of materials and labor necessary for installation, permit fees, inspection fees, and other eligible costs, fees and expenses related to the Project, to program administrative fees (“Program Fees), allocable to the costs and fees of operating the Program or other fees that may be incurred by the Record Owner pursuant to the installation and the issuance of Bonds on a specific pro rata basis and the provision of interim financing by the Warehouse Fund, to other incidental fees and expenses (“Other Fees”), allocable to all other capitalized closing fees that may be incurred by the Record Owner to pay administrative costs including property specific legal reviews and recording fees, to capitalized interest (“Capitalized Interest”), to a debt service reserve (if required) (“Debt Service Reserve”), and to any fees charged by a private lender or capital provider (“Capital Provider Fees). The Assessment shall be spread among the PINs in the years and amounts as set forth below [in an amendment to this Schedule which shall be executed when the Bonds are issued].

Interest Rate: ___% per annum

Term: ______ years

<table>
<thead>
<tr>
<th>Project Cost</th>
<th>Program Fees</th>
<th>Other Fees</th>
<th>Capitalized Interest</th>
<th>Debt Service Reserve (if required)</th>
<th>Capital Provider Fees</th>
<th>Assessment Amount</th>
</tr>
</thead>
</table>

Annual Administrative Assessment Fees are not included in the Assessment Amount but are due and payable by the Record Owner in addition to the Assessment Installment.

<table>
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<tr>
<th>Tax Year (commencing January 1)</th>
<th>Interest</th>
<th>Principal</th>
<th>Assessment Installment</th>
<th>Annual Administrative Assessment Fee*</th>
<th>Total Estimated Contractual Assessment Payment</th>
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1
Prepayment:

The Assessment may be prepaid, in whole or in part, as described in Section 3(f) of this Contract and as set forth below.

Minimum prepayment amount: $____________

Redemption premium:
SCHEDULE II

ENVIRONMENTAL SCHEDULE

[INSERT “NONE” IF NOT APPLICABLE]
Program Report

FOR CITY OF FAIRVIEW HEIGHTS, ILLINOIS – PROPERTY ASSESSED CLEAN ENERGY PROGRAM (PACE)

Prepared by:
SUSTAINABLE SOLUTION FUNDING, LLC | ST. LOUIS, MO
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Introduction
This Program Report (the “Report”) is prepared pursuant to the Property Assessed Clean Energy Act, 50 ILCS 50/1 et seq. (the “PACE Act”), at the direction of the City of Fairview Heights, Illinois (the “City”), as an attachment to the enabling ordinance for this program. The purpose of the Report is to identify the necessary statutory controls and guidelines for the establishment of a Property Assessed Clean Energy Program (the “Program”) for the City. The purpose of the Program is for commercial property owners (“Record Owners”) to improve their properties by installing and/or upgrading their properties with certain Energy Conservation Measures. The Record Owners can receive funding for the Energy Conservation Measures from approved financing companies (“Capital Providers”). Per the PACE Act, in order to establish a PACE program, the governing body of a local unit of government must adopt a resolution or ordinance that meets the requirements of Section 15 of the PACE Act, and the ordinance must contain a reference to a Report that details the items required to create and structure a PACE program (per Section 20 of the PACE Act). Below are the criteria the Report needs to address to form a PACE Program.

§20(1) Form of Assessment Contract
Please See Exhibit A, attached and incorporated herein as referenced.

§20(2) Officials Authorized to Enter into Assessment Contracts on Behalf of the City
The City of Fairview Heights Department of Economic Development will oversee the Program (named the “Fairview Heights PACE Program”). The City of Fairview Heights has selected by ordinance, Sustainable Solutions Funding, LLC to administer the Program (the “Program Administrator”). The Director of Economic Development (the “Director”), will be the point of contact for the Program Administrator on matters related to the PACE Program and give authorizations as necessary for the continued operation of the PACE Program in accordance with program guidelines that the Director
approves (the “Program Guidelines”). The Director can issue, or direct to be issued, required authorizations and amendments to the Program Guidelines. The Director or one of his designees will be authorized to execute assessment contracts.

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 Director will review and approve the Program Guidelines.

The Director will delegate Program Administrator duties to Sustainable Solutions Funding, LLC. The Director 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 Program Administrator to interact with the City as part of the administration of the PACE Program.

§20(4) Application Process and Eligibility Requirements for Financing or Refinancing Energy Projects Under the Program

Eligible Properties
Any privately-owned commercial, industrial, non-residential agricultural, or multi-family (of 5 or more units) real property or any real property owned by a not-for-profit located within the boundaries of the City.

Eligible Energy Projects
The acquisition, construction, installation, or modification of an alternative energy improvement, energy efficiency improvement, renewable energy improvement, or water use improvement affixed to real property (including new construction).

- Alternative Energy Improvement means any fixture, product, system, equipment, device, material, or interacting group thereof intended to charge a motor vehicle that is fully or partially powered by electricity, including, but not limited to electrical wiring, outlets, or charging stations.

- Energy efficiency improvement means any fixture, product, system, equipment, device, material, or interacting group thereof intended to decrease energy consumption or enable a more efficient use of electricity, natural gas, propane, or other forms of energy on property, including, but not limited to, all of the following:
  1. insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;
  2. energy efficient storm windows and doors, multi-glazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, and additional glazing, reductions in glass area, and other window and door systems system modifications that reduce energy consumption;
(3) automated energy or water control systems;
(4) high efficiency heating, ventilating, or air-conditioning and distribution systems;
(5) caulking, weather-stripping, and air sealing;
(6) lighting fixtures;
(7) energy controls or recovery systems;
(8) day lighting systems;
(8.1) any energy efficiency project, as defined in Section 825-65 of the Illinois Finance Authority Act; and
(9) any other fixture, product, system, equipment, device, or material intended as a utility or other cost-savings measure as approved by the City.

• Renewable energy improvement means any fixture, product, system, equipment, device, material, or interacting group thereof on the property of Record Owner that uses one or more renewable energy resources to generate electricity, including any renewable energy project, as defined in Section 825-65 of the Illinois Finance Authority Act.
  o Renewable energy resource includes energy and its associated renewable energy credit or renewable energy credits from wind energy, solar thermal energy, geothermal energy, photovoltaic cells and panels, biodiesel, anaerobic digestion, and hydropower that does not involve new construction or significant expansion of hydropower dams. For purposes of this Act, landfill gas produced in the State is considered a renewable energy resource. The term "renewable energy resources" does not include the incineration or burning of any solid material.

• Water use improvement means any fixture, product, system, equipment, device, material, or interacting group thereof intended to conserve water resources or improve water quality on property, including, but not limited to, all of the following:
  (1) Water management or efficiency systems;
  (2) Water recycling;
  (3) Capturing, reusing, managing, and treating stormwater;
  (4) Bioretention, trees, green roofs, porous pavements, or cisterns for maintaining or restoring natural hydrology;
  (5) Replacing or otherwise abating or mitigating the use of lead pipes in the supply of water; and
  (6) Any other resiliency improvements, fixture, product, system, equipment, devise, or material intended as a utility or other cost-savings measure as approved by the City.
    ▪ Resiliency improvement means any fixture, product, system, equipment, device, material, or interacting group thereof intended to increase resilience or improve the durability of infrastructure, including but not limited to, seismic retrofits, flood mitigation, fire suppression, wind resistance, energy storage, microgrids, and backup power generation.
PACE Financing Application Process and Required Documents

The Program Administrator will oversee the Project Application process to assure that the PACE Projects are compliant with the PACE Act, enabling ordinance and Program Guidelines. The Program Guidelines will detail the process and may be amended with approval of the Director.

The general flow of the application process will be as follows;

(1) The Record Owner will submit a pre-application, identifying the Property and the intent to participate in the Program;
(2) The Program Administrator will determine the eligibility of the Property and contact the Record Owner to request the required documents to submit a final application;
(3) Once a completed set of the required documents have been submitted by the Record Owner, a final application will be reviewed by the Program Administrator, the Finance Authority, and the Capital Provider;
(4) If the final application is approved, the Record Owner and the Finance Authority will close on financing and the Assessment will be recorded;
(5) Energy Projects will then be implemented;
(6) Funds disbursed upon completion;
(7) Record Owner begins installment payments per the Assessment Contract.

Required Documents:

As part of the final application, and before the City will enter into an Assessment Contract with the Record Owner, the Program Administrator must determine that the Property is within the municipal boundaries of the City and the Record Owner must produce documents as evidence of all of the following:

(1) that there are no delinquent taxes, special assessments, or water or sewer charges on the property;
(2) that there are no delinquent assessments on the property under a property assessed clean energy program;
(3) 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;
(4) that no notices of default or other evidence of property-based debt delinquency have been recorded and not cured;
(5) 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;
(6) 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 City or its program administrator;
(7) that the contractor or contractors to be used have signed a written acknowledgement that the City or its program administrator will not authorize final payment to the contractor or contractors until the City 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;

(8) 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 (§20(10)):
   (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; and

(9) 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, renewable energy improvement, or water use improvement, unless the water use improvement is undertaken to improve water quality (Energy Assessment).

§20(5) Method of Determining Interest Rates on Amounts Financed or Refinanced Under Assessment Contracts, Repayment Periods, and the Maximum Amount of an Assessment

Capital Providers will be subject to approval by the Finance Authority. It is expected that multiple Capital Providers will be approved in this manner and will offer competitive rates and financing terms and conditions. Public funds are not anticipated to be made available for funding PACE projects, thought units of government are not prohibited from participating as Capital Providers. Ultimately, interest rates will be driven by the securitization market and the administrative costs associated with the financing instrument (bonds). The standardization model the Finance Authority has developed and will be utilized with the PACE Program will limit those costs and should generate the lowest rates, regardless of the Capital Provider.

§20(6) Explanation of the Process for Billing and Collecting Assessments

The attached Assessment Agreement

Assessments created under this Act may be billed and collected as follows:

(1) A county which has established a program may include assessments in the regular property tax bills of the county. The county collector of the county in which a PACE area is located may bill and collect assessments with the regular property tax bills of the county if requested by a municipality within its jurisdiction; no municipality is required to make such a request of its county collector. If the county collector agrees to bill and collect assessments with the regular property tax bills of the county, then the applicable assessment contract shall be filed with the county collector and the annual amount due as set forth in an assessment contract shall become due in installments at the times property taxes shall become due in accordance with each regular property tax bill payable during the year in which such assessment comes due;

(2) If the county collector does not agree to bill and collect assessments with the regular property tax bills of the county or the governmental unit in which the PACE area is located declines to request the county collector to do so, then the governmental unit shall bill and collect the assessments, either directly or as permitted in paragraph (3) of this subsection, and the annual
amount due as set forth in an assessment contract shall become due in installments on or about the times property taxes would otherwise become due in accordance with each regular property tax bill payable during the year in which such assessment comes due; or

(3) If a governmental unit is billing and collecting assessments pursuant to paragraph (2) of this subsection, assessment installments may be billed and collected by the governmental unit’s program administrator or program administrators or another third party. The assessment installments for assessments billed as provided for under any paragraph of this subsection shall be payable at the times and in the manner as set forth in the applicable bill.

§20(7) Plan to Finance the Program Pursuant to the Issuance of PACE Bonds in Accordance with §35

Bonds will be issued through the Illinois Financing Authority as the financing conduit. The Illinois Financing Authority has developed standardized bond issuance documents that have been verified as conforming to the PACE Act and existing Illinois law and are designed to streamline the bond issuance process and minimize and risk associated with the process. Only capital providers that are approved by the Illinois Financing Authority and have come to an agreement with the Illinois Financing Authority on the utilization of the bond issuance document set will be used as a funding source for PACE Projects with the Program.

§20(8) Information Regarding All of the Following, to the Extent Known, or Procedures to Determine the Following;

(A) Any revenue source or reserve fund or funds to be used a security for PACE bonds described in §20(7);

The Authority does not current maintain a reserve fund as security for the issuance of bonds for PACE programs. The establishment of any such fund and the resulting fees that this would entail to fund would be subject to approval of the Director and an amendment of the Program Guidelines.

(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 City as a result of the Program;

The Record Owners will be charged an application fee, cost of issuance fees & closing costs associated with the closing of a PACE project, interest on the funds financed by the 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. These fees will be explicitly determined in the closing documents for each project as part of the project development process and disclosed in the final application documents prior to the closing of financing.
§20(9) Requirement That the Term of an Assessment Not Exceed the Useful Life of the Energy Project Financed, or Refinanced Under and 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

The useful life energy upgrades financed through the Program and described in the final application documents (Energy Assessment) may not exceed the term of the financing. This is to avoid a property owner having to continue payments after an upgrade has been replaced. The useful life of an upgrade will be determined by industry standards of the individual Energy Projects. For Projects with multiple Eligible Energy Projects, the term of the PACE Financing may not be greater than the Eligible Energy Project with the longest expected useful life. The Eligible Energy Project with the longest expected useful life must be a substantial portion of the overall PACE Project, subject to the Program Administrator’s review and approval.

§20(10) Requirement for an Appropriate Ratio of the Amount of the Assessment 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;

As part of the application process (§20(4)); part of the final application required documents will be evidence 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.

§20(11) Requirement That the Record Owner of Property Subject to a Mortgage Obtain Written Consent from the Mortgage Holder Before Participating in the Program

Before entering into an Assessment Contract with the City, the Record Owner shall provide to the mortgage holders of any existing mortgages encumbering or otherwise secured by the property a notice of the Record Owner’s intent to enter into an assessment contract with the City, together with the
maximum principal amount to be financed or refinanced and the maximum annual 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 Program. The City shall
be 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 (i) the existing
mortgage or mortgages for which the consent was received will be subordinate to the assessment
contract and the lien created thereby and (ii) the City or its permitted assignee can foreclose the
property if the assessments are not paid.

§20(12) Provisions for Marketing and Participant Education
Marketing will consist of broad outreach directly and indirectly to various stakeholder groups, including
civic, business, development and other interested parties, as well as any earned media generated by the
operation of the Program. It is expected that applications for the Program will be driven by both
property owners and developers that have heard about the benefits of PACE financing and by
contractors, such as energy service companies (ESCOs), that see the value in offering this type of
financing for their clients. Contractors are typically the ambassadors of successful PACE programs, so
information about the Program will be made available to contractors wishing to participate. A
contractor can register with the Program for a nominal fee as a participant. A website with information
about the Program, a list of contractors participating in the Program and a Project pre-application will be
developed as part of the Program launch.

Program Launch
Upon the development of Program Guidelines and other materials, a date will be set for a Program
launch. This launch will be preceded by an announcement, with the hopes of generating interest with
the media, local groups, and state/national advocacy groups.

§20(14) Quality Assurance and Anti-Fraud Measures
While commercial property owners can be assumed to be more sophisticated in participating in an
“arms length” transaction, in comparison to a typical residential property owner, certain safeguards
must be in place to assure that there are no bad actors in the program and that property owners are not
either being taken advantage of or that this method of financing isn’t being abused by any of the
participants. The process established with the Program takes several steps to ensure this.

First, as part of the final application, the property owner must demonstrate a minimum level of fiscal
solvency to participate in the Program to prevent the property owner from abusing this financing
method and getting over extended. This is done by requiring:

(1) that there are no delinquent taxes, special assessments, or water or sewer charges on the
property;
(2) that there are no delinquent assessments on the property under a property assessed clean
energy program;
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;

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

(5) 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.

Contractors must maintain a standard of professionalism by providing 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 City or the program administrator. This includes maintaining registration in the Program. Details of additional requirement and conditions for maintaining registration in the Program will be detailed in the Program Guidelines.

There will be assurance that the work will be completed because the contractor will have to sign a written acknowledgement that the City or its program administrator will not authorize final payment to the contractor or contractors until the City 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.

Finally, Record Owners can have some level of assurance that the improvements to their property will help their cash flow because it is required 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, renewable energy improvement, or water use improvement, unless the water use improvement is undertaken to improve water quality (Energy Assessment).

The operation and the oversight of the Program Administrator and Director, along with the underwriting criteria and requirements of the Finance Authority, as well as any Capital Provider, will assure the integrity of any assessments recorded or financial instruments executed as part of the operation of the Program and that every PACE Project meets all statutory requirements.

Conclusion and Summary
This Program Report was developed at the request of the City of Fairview Heights, Illinois, to be attached to their enabling ordinance to establish a PACE Program for the financing of commercial PACE projects within City’s boundaries. The purpose of this Program Report is to enumerate how the Program will adhere to all of the statutory requirements for running a PACE program as specifically stated in the Property Assessed Clean Energy Act, 50 ICS 50/1 et seq. This Program Report has directly referenced paragraphs within the PACE Act to identify how the Program will address each requirement.
MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
CITY OF FAIRVIEW HEIGHTS, ILLINOIS
AND
SUSTAINABLE SOLUTIONS FUNDING, LLC

This Memorandum of Understanding (the “Agreement”) made this 18th day of June, 2019, by and between the CITY OF FAIRVIEW HEIGHTS, ILLINOIS (the “CITY”), having its administrative offices at 10025 Bunkum Road, City of Fairview Heights, Illinois 62208 and SUSTAINABLE SOLUTIONS FUNDING, LLC (“SSF”), a limited liability company, including its successors and assigns, organized and existing under the laws of the State of Missouri and having its principal place of business at 12739 Cypressway Drive, St. Louis, MO 63146.

WITNESSETH THAT:

WHEREAS, CITY has created, by ordinance, a program authorized to exercise authority and powers pertaining to projects for energy efficiency improvement or renewable energy improvements as enabled by Property Assessed Clean Energy (PACE) Act (50 ILCS 50/1 et seq); and

WHEREAS, CITY desires to engage SSF to render the services of Program Administrator in connection with the implementation of its PACE Program; and

WHEREAS, CITY recognizes that significant work product is required to launch the PACE Program and that the only way to compensate SSF is through the fees generated by the Program;

NOW, THEREFORE, CITY and SSF, for the mutual consideration, the sufficiency of which is acknowledged, and under the terms and conditions hereinafter set forth, do agree as follows:

I. SCOPE OF SERVICES TO BE PERFORMED

SSF agrees to perform the services described in Exhibit A, attached hereto and incorporated herein by this reference. The services to be performed by SSF described in Exhibit A and in the balance of this Agreement are hereinafter referred to as the “Services”.

II. TERM AND TIME OF PERFORMANCE

The Services will commence upon execution hereof and will terminate upon completion of all matters assigned to SSF by CITY. CITY shall cooperate with SSF in providing the agreed upon information and access to information as necessary for SSF to render the Services.
III. COMPENSATION

The parties further agree that SSF’s compensation will be derived from the operation of the Program and that no compensation will be paid to SSF by City.

IV. TERMINATION

CITY or SSF may terminate the Agreement for an uncured material default as defined in Section II for which notice and a request to cure has been provided. Furthermore, CITY may terminate this Agreement at any time, for its convenience and without cause. Any termination hereunder shall be effective not less than thirty days (30) following receipt of such termination notice in accordance with Section IX, provided, however, that upon termination for any reason, the Program Administrator shall continue to process and fund all projects for which completed applications were received prior to the effective date of the termination.

V. CHANGES

CITY may, from time to time, request changes in the Scope of Services to be performed hereunder, including revisions due to adjustments made by CITY in the scope or quality of the project. Such changes, and any other changes to the Agreement which are mutually agreed upon by and between CITY and SSF, shall become effective only if incorporated in written amendments to the Agreement and executed by both parties.

VI. CHOICE OF LAW

The laws of the State of Illinois shall govern the interpretation and enforcement of the Agreement, including the choice of law. Suit to enforce or interpret the terms of this Agreement shall be brought only in the Circuit Court for St. Clair County, Illinois, and the parties consent to the jurisdiction of such court.

VII. INDEMNIFICATION AND INSURANCE

SSF shall indemnify and hold harmless CITY from any claim or cause of action resulting from the act or omission of SSF, its agents and/or employees, concerning its services and performance as PACE Program Administrator for CITY under this Agreement. SSF shall maintain commercial general liability insurance coverage with limits of at least Three Million Dollars ($3,000,000) aggregate, against personal injury/death and/or property damage/loss, subject to the same limits for each person, in an amount not less than One Million Dollars ($1,000,000), naming CITY as an additional insured, and proof/verification of same shall be submitted in writing to CITY within thirty (30) days of the execution of this Agreement. Such insurance coverage shall be primary, non-contributory and include a waiver of subrogation in favor of CITY. SSF shall further maintain worker’s compensation coverage as required by law.

VIII. NO WAIVER BY CITY

The failure of CITY or SSF in any instance to insist upon strict performance of any of the terms hereunder or to exercise any rights conferred herein shall not be construed as a waiver or
relinquishment to any extent of the right to assert or rely upon any such terms or rights on any future occasion.

IX. NOTICE

Any notices, consents, requests and demands required or permitted under the terms of the Agreement shall be in writing and shall be deemed to have been duly served, given, or made when personally delivered or delivered by registered or certified mail, return receipt requested, or by facsimile and addressed as follows:

i. To CITY:
   Paul Ellis
   Director of Economic Development
   City of Fairview Heights
   10025 Bunkum Road
   City of Fairview Heights, IL 62208

ii. To SSF:
    Thomas D. Appelbaum,
    Member
    Sustainable Solutions Funding, LLC
    12739 Cypressway Drive
    St. Louis, MO 63146

or at such other address as either party may specify, in writing, from time to time. All notices shall be deemed to have been received on the date delivered in the case of personal delivery or on the second business day subsequent to the date of the U.S. Postal Service postmark after being deposited in the United States mail, postage prepaid, registered or certified (return receipt requested), or in the case of overnight courier service, one day after delivery to the overnight courier service, or in the case of facsimile notice, when sent and verification is received.

X. SUCCESSORS IN INTEREST

The Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns.

XI. ATTACHMENTS

This Agreement consists of the terms of this Agreement and the Appendices listed below. The following Appendices are each made a part of this Agreement and are hereby incorporated by reference into this Agreement as though fully set forth herein: Exhibit A – Scope of Services.

XII. AUTHORIZATION
SSF warrants and represents that it has the appropriate authorization to enter into this Agreement with CITY and that the individual executing this Agreement on behalf of SSF is authorized to do so and that this contract binds its successors and assigns.

XIII. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the parties with respect to the subject hereof and neither party has been induced to make or enter into the Agreement by reason of any oral or written agreement or representation other than those contained herein.

XIV. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF the Parties have caused this instrument to be executed by their respective proper officials:

Executed by SSF the ____________ day of June, 2019.

Executed by CITY the ____________ day of June, 2019

SUSTAINABLE SOLUTIONS FUNDING, LLC

___________________________
Thomas D. Appelbaum
Member

CITY OF FAIRVIEW HEIGHTS, ILLINOIS

___________________________
Mark Kupsky, Mayor

Approved as to legal form:

___________________________
Garrett Hoerner, City Attorney
EXHIBIT A

SCOPE OF SERVICES

Program Management Responsibilities

The Program Administrator will provide all Program management functions of the PACE Program (the “Program”) in order to comply with both the state authorizing legislation and City ordinance related to PACE projects. The following list includes, but is not limited to, expected activities to be provided by the Program Administrator:

- Draft Program Report to be included with enabling ordinance.
- Ensure Program project activities comply with all applicable local, state, and federal laws and regulations.
- Establish clear approval processes and generate documentation deemed necessary for operation of the Program.
- Provide guidance on program policies and procedures.
- Manage project application intake and processing, project eligibility.
- Provide all required program reporting and metrics.

Marketing and Outreach Responsibilities

- Work with the City to leverage any earned media opportunities to promote the Program.
- Outreach to property owners and contractors to assist in identifying potential projects that could utilize the Program and facilitate engagement.

Financial Management Responsibilities

- Coordinate with the Illinois Financing Authority (the “Authority”) to ensure program documents adhere to standards for bond issuance.
- Coordinate funding sources for bond issuance and facilitate approval process with the Authority.
- Coordinate transactional duties with the Authority for project funding.
MEMORANDUM

TO: Elected Officials

FROM: Paul A. Ellis, Director of Economic Development

DATE: July 12, 2019

SUBJECT: Economic Dev. Dept. - Director's Report

1. The Steering Group for the Economic Development Strategy is reviewing elements of community place-making and has defined several “neighborhoods” for consideration:
   a. North of I-64
   b. Regional Retail
   c. West End
   d. Moody Park
   e. Frank Scott Parkway
   f. The Valley (Metrolink)

2. Members of the Steering Group will meet again in August to review draft recommendations in preparation for a second Community Open House in late August or September.

3. St. Clair Square is welcoming the opening on Monday of Aerie (stylized as aerie), a lingerie lifestyle retailer and intimate apparel sub-brand owned by American Eagle Outfitters targeting the 15- to 25-year-old female demographic; the store is complementary to H&M, the new clothing retailer opening in the mall in September.

4. National retailer OshKosh B’gosh, a children’s apparel subsidiary of Carter’s, has signed a lease for pad space in Lincoln Place II; opening date yet to be announced.

5. Brightstar Capital Partners, a New York-based private investment firm, has acquired Gateway Bobcat, LLC (Bobcat of St. Louis) in partnership with Gateway Bobcat’s Founder & CEO Dan Anich, President Mike Allen, and members of its leadership team; there is no indication yet as to what impact, if any, acquisition will have on plans to expand or relocate the Fairview Heights facility.

6. The Director and the Director of Land Use & Development met with the owners of a business in the French Village area to discuss potential for expansion of their facility.

7. Local hotels have joined the City to cooperatively fund a full-page advertisement in the IndyCar Fan Program for World Wide Technology Raceway at Gateway as part of a growing partnership by and between the raceway, the City and participating hotels.

8. The Director has been working with Sustainable Solutions Funding (SSF) of St. Louis and the Illinois Finance Authority since the last Community Committee to
Economic Dev. Dept. – Director’s Report (continued)

develop a local program for PACE (property assessed clean energy) financing for commercial properties; attached for review is the draft Ordinance to establish the program and the draft Memorandum of Understanding with SSF as the proposed Program Administrator.

9. Billboards to promote the Midwest Salute to the Arts event will be installed at two locations along I-64 entering Illinois for about two weeks prior to the event.

10. A public agency is looking to lease a large space for operations in the area; the agency’s broker met with the Mayor, the Director and the Director of Land Use & Development recently to review a potential location in the city’s West End; the discussion continues.

11. The Metro East Business Incubator (MEBI) is now pursuing financial support from several financial institutions and other businesses to match funding allocated by the State of Illinois and support opening of the facility at St. Clair Square this fall.

12. Fairview Heights will again host the Downstate Illinois P3 Luncheon for the International Council of Shopping Centers at the Fountains Conference Center on Aug. 29; keynote presenter this year will be the Vice President of Real Estate for Bealls Outlet Stores, a fast-growing chain just entering the Illinois market.

13. The Director has been awarded recertification for another three years by the International Economic Development Council (IEDC) in recognition of his continued professional experience, networking, and training.

Paul A. Ellis
Director of Economic Development

Attachments:

a. Ad for Fairview Heights lodging to run in the 2019 Worldwide Technology Raceway at Gateway IndyCar Fan Program
b. DRAFT Ordinance – Establishing a Property Assessed Clean Energy (PACE) area and establishing a PACE program to finance or refinance construction and installation of energy projects; and other matters related thereto
c. DRAFT Memorandum of Understanding – by and between City of Fairview heights, Illinois and Sustainable Solutions Funding, LLC
d. Recertification letter from the International Economic Development Council (IEDC)
June 20, 2019

Paul A. Ellis, CEcD
City of Fairview Heights
10025 Bunkum Rd.
Fairview Heights, IL 62208

Dear Paul,

Thank you for submitting your Certified Economic Developer's maintenance documentations to IEDC. Based on your good standing of professional development activities and recertification fees, you have successfully completed the requirements to maintain your certification.

This acknowledgement confirms that your recertification will now cover a three-year period from 10/1/19-9/30/22.

You will find the newly redesigned CEcD Certificate, press release, and activity document tracker enclosed in this packet. Please note that the certificate indicates your recertification due date. You will receive an updated certificate after each recertification cycle.

Feel free to reach me at 202.223.7800 if you have any questions.

Sincerely,

Phil Goodwin
Professional Development Coordinator

The Power of Knowledge and Leadership
LODGING AVAILABLE IN FAIRVIEW HEIGHTS:

- Comfort Suites
- Drury Inn
- Econo Lodge
- Fairview Inn & Suites
- Four Points by Sheraton
- French Village Motel
- Hampton Inn
- Holiday Inn
- Super 8
- Trailway Motel

Fairview Heights is the nearest full service community to the World Wide Technology Raceway at Gateway and features more than 3 million square feet of retail space, including:

- Downstate Illinois’ super regional shopping mall – St. Clair Square
- Seven other regional shopping centers
- More than 75 restaurants
- Two conference centers
- The REC - (New $20 Million Recreational Center)

THAT’S WHY FOR FIFTY YEARS, WE’VE BEEN KNOWN AS THE “RETAIL HUB OF SOUTHERN ILLINOIS.”

NEW in 2019:

- Aerie
- OshKosh B’gosh
- H&M
- Total Wine & More
- Urban Air Adventure Park

Mall | Shops | Dining | Entertainment | Hotels

FOR MORE INFORMATION, CONSULT OUR WEBSITE AT WWW.COFH.ORG
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