



City of Chicago



SO2018-5032

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	6/27/2018
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Establishment of Chicago Property Assessed Clean Energy (PACE) area and program to finance acquisition and construction of energy projects
Committee(s) Assignment:	Committee on Finance

SUBSTITUTE ORDINANCE

ESTABLISHING A PACE AREA AND ESTABLISHING A PACE PROGRAM TO FINANCE THE ACQUISITION AND CONSTRUCTION OF ENERGY PROJECTS

WHEREAS, the City of Chicago, Illinois (the “City”) is a municipal corporation and 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.) (as amended, supplemented, modified or replaced, 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 energy projects (as defined in the PACE Act); and

WHEREAS, pursuant to an ordinance adopted by the City Council of the City on July 25, 2018, Loop-Counterpointe Pace LLC was designated a Program Administrator (the “Administrator”) to assist the City in developing a PACE Program; and

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

WHEREAS, the City now desires to establish the PACE area as the entire corporate limits of the City of Chicago and to establish the PACE Program as further described herein and in the Report and to finance energy projects; and

WHEREAS, any bonds to be issued by the City pursuant to the PACE Act will be approved pursuant to a separate ordinance to be considered at a future meeting of the City Council; and

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 (the “Authority”) to issue bonds under the conditions described in the PACE Act;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CHICAGO, ILLINOIS, AS FOLLOWS:

Section 1. Incorporation of the Recitals. The City 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 Administrator; Creation of the PACE Area. The City hereby finds as follows:

- a. The financing of energy projects (as defined in the PACE Act) is a valid public purpose and serves an essential governmental function;

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

c. A description of the territory within the PACE area, the types of energy projects that may be financed, and the description of the proposed arrangements for financing the PACE Program through the Administrator, are all set forth in the Report attached hereto as Exhibit A. The Report is hereby incorporated by reference thereto and made a part hereof. The City hereby approves the Report and hereby establishes the PACE area as the corporate limits of the City, all as further described in the Report.

Section 3. No Public Hearing; Program Established. The City 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 Report.

Section 4. Assessment Contract. The form of Assessment Contract attached as Appendix B to the Report is hereby approved by the City. The Commissioner of the City's Department of Planning and Development or a designee of such Commissioner (collectively, an "Authorized Officer") is hereby authorized, with the approval of the City's Corporation Counsel, to negotiate, execute and deliver one or more Assessment Contracts with borrowers meeting the requirements set forth in the Report (each, an "Assessment Contract") in substantially the form of Appendix B to the 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 each Assessment Contract with the Recorder of Deeds of Cook County. The execution of such agreements and instruments shall be conclusive evidence of such approval. Before executing any Assessment Contract, the Authorized Officer shall make the following determination in a written notification to be filed with the City Clerk:

- i. that the property to be assessed is within the PACE area of the City;
- 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 and described in the Report;
- viii. the contractors to be used have signed a written acknowledgement that the City will not authorize final payment to the contractor until the City 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%;
- 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 Report; and
- xi. at least 30 days before entering into the Assessment Contract with the City, the record owner has provided to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the record owner's intent to enter into the Assessment Contract with the City, together with the maximum principal amount to be financed and the maximum annual 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; and further, 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 or, if applicable, its permitted assignee can foreclose the property if the assessment is not paid has been provided to the City.

Section 5. Additional Actions. The Authorized Officer is hereby authorized, with the approval of the City's Corporation Counsel:

(a) on and after January 1, 2019, the effective date of the Amendment, in connection with the issuance by the Authority of bonds (the "Authority Bonds") under subsection (d) of Section 825-65 of the Illinois Finance Authority Act (20 ILCS 3501 et seq.), to negotiate, execute and deliver, with the approval of the City's Chief Financial Officer, one or more agreements assigning to the Authority the Assessment Contract securing such Authority Bonds;

(b) to negotiate, execute and deliver one or more intergovernmental agreements, pursuant to the City's authority as a home rule unit of local government under the 1970 Constitution of the State of Illinois, with the County of Cook (the "County"), a body corporate and politic of the State of Illinois, under which the County would agree to bill the owner of property subject to an Assessment Contract for the installment of the assessment and may collect fees related to such billing, as described in the Report;

(c) to negotiate, execute and deliver an agreement with the owner of each property subject to an Assessment Contract (the "Owner"), under which the Owner would, with respect to the energy project, agree to comply with (i) the payment of prevailing wage rate as ascertained by the Illinois Department of Labor, (ii) for energy projects in which the total project cost is over \$2,000,000, the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., of the Municipal Code of the City of Chicago, as amended from time to time (the "Code") and the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq. of the Code and (iii) Section 2-92-330 of the Code with respect to the number of total worker hours worked by actual residents of the City; and

(d) to approve the form of Guidebook (as defined in the Program Report) and to negotiate, execute and deliver such other supporting documents as may be necessary or appropriate to implement the PACE Program;

in each case in such form as shall be approved by the Authorized Officer, together with such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of such agreement or instrument, with the execution of such agreements and instruments being conclusive evidence of such approval.

The Authorized Officer will provide to the Committee on Finance of the City Council copies of the bi-annual program reporting provided by the Administrator.

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 Code or violation of any provision of the 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 Code. Financing under the PACE Program shall not be considered "Financial assistance" as defined in Section 2-45-115 of the Code.

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

This Ordinance shall become effective upon its passage and approval.

EXHIBIT A
Program Report
(attached)



CITY OF CHICAGO

Program Report



Property Assessed Clean Energy Program

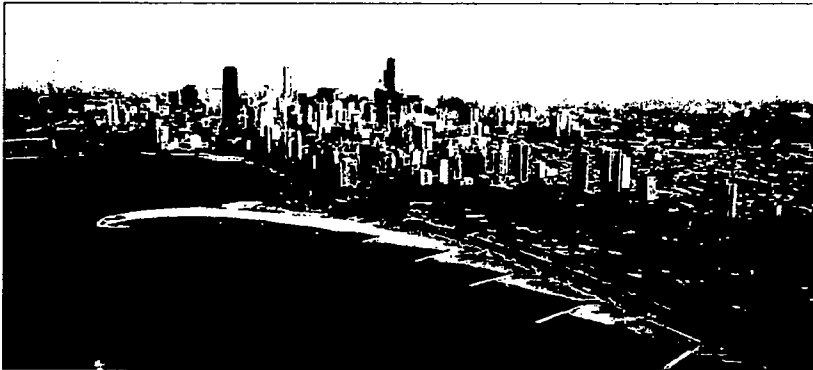




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- A. Map of the City of Chicago**
- B. Form of Assessment Contract**



Introduction

The City of Chicago (the “City”) is establishing a voluntary property assessed clean energy (“PACE”) program to finance the installation or modification of an alternative energy improvement, an energy efficiency improvement or a water use improvement, or the acquisition, installation or improvement of a renewable energy system that is affixed to a stabilized existing property [or to a newly constructed building]¹ (collectively, “Energy Projects”).

The City’s PACE program, known as Chicago PACE (“Chicago PACE” or the “Program”) is available for privately-owned commercial, industrial, co-op, multi-family (five or more units) and non-residential agricultural properties in the City (collectively, “Eligible Properties”). Chicago PACE is available City-wide, as reflected on the PACE area map, which is attached as **Appendix A**.

The Program is designed to accelerate private investment in Energy Projects on existing [and newly constructed]² buildings on Eligible Properties. The City and its residents and businesses will benefit from the Energy Projects financed through the Program that enables private sector funding for 100% of the costs of Energy Projects, at no cost to the City, to further the City’s sustainability and economic development goals, including:

- Energy Efficiency and Clean Energy
- Water Conservation
- Climate Change Mitigation
- Improved Air Quality
- Economic Development and Job Creation
- Minority- and Women-Owned Enterprises Engagement

Purpose of the Program Report

Enacted in 2017 and amended in 2018 (effective January 1, 2019), the Property Assessed Clean Energy Act, 50 ILCS 50/1 et seq. (the “Illinois PACE Act”) authorizes local units of government in Illinois to create PACE programs. The City is establishing a PACE program by adopting an ordinance meeting the requirements of Section 15 of the Illinois PACE Act, including the adoption of a program report as required by Section 20 of the Illinois PACE Act. This Program Report contains a description of how PACE works, its benefits and an outline of the basic design and financing structure of the Program. Certain amendments to the Illinois PACE Act will become effective January 1, 2019 and would impact descriptions included in this Program Report. Throughout this Program Report, bracketed and footnoted language and any other portion(s) of the Program Report reflecting these amendments will become effective January 1, 2019; copies of the Program Report produced after January 1, 2019 may omit this sentence and such brackets and footnotes.

This Program Report will be included in the ordinance to be considered by the Chicago City Council to create the Program as required by the Illinois PACE Act.

¹ Effective January 1, 2019.

² Effective January 1, 2019.



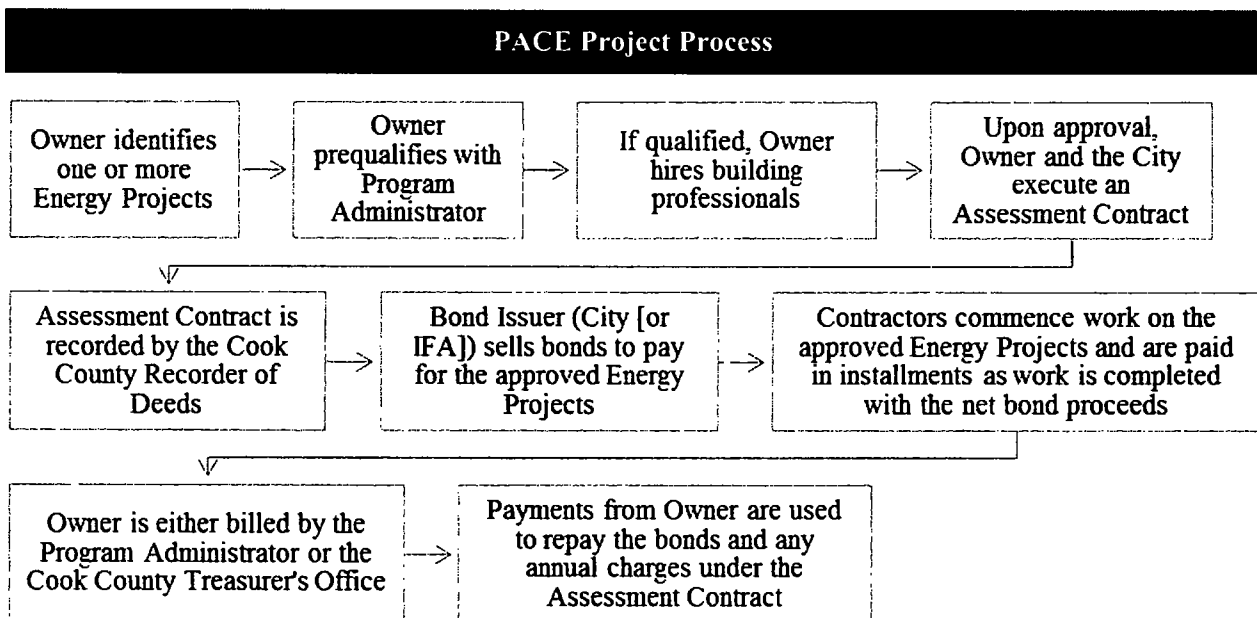
Description of Chicago PACE

Chicago PACE finances the voluntary installation or modification of Energy Projects on Eligible Properties utilizing a non-ad valorem assessment on the Eligible Properties being improved. Property owners can use PACE financing to fund 100% of the cost involved in installing or modifying Energy Projects, including all related equipment, materials and labor, as well as soft and closing costs.

The City will enter into an assessment contract with the property owner in order to secure the PACE financing. The assessment contract describes the Energy Project being financed, the property on which such Energy Project will be installed or modified, and the amount financed. The assessment contract will also define capitalized closing costs, the interest rate, the term, the annual installments, including estimated annual costs, and the prepayment terms and conditions. Interest rates are fixed, the assessment fully amortizes over the term of the assessment and there are no balloon payments.

The assessment contract will be recorded by the Cook County Recorder of Deeds as a lien on the property and thereafter will be funded through the issuance of bonds by [either]³ the City [or the Illinois Finance Authority (the "IFA")]⁴. [In some cases, projects may also be temporarily funded through the use of a warehouse fund until the bonds are issued.]⁵ Pursuant to the assessment contract, the property owner makes assessment installment payments of principal, interest, and any other annual costs. The assessments are either billed directly to the property owner or added to the property owner's tax bill.

Because the assessment is attached to the property being improved, if the property is sold before the assessment is paid off, the balance of the assessment remains with the property and seamlessly transfers to the new owner without any need to approve the new owner.



The Benefits of PACE

³ Effective January 1, 2019.

⁴ Effective January 1, 2019.

⁵ Effective January 1, 2019.



PACE provides the following benefits to the City:

- Improves air quality and reduces pollution
- Accelerates needed private infrastructure improvements
- Spurs local workforce development and job creation in the clean energy sector
- Provides a steady stream of work and revenue to building professionals
- Boosts Minority- and Women-Owned Enterprises

Roles and Responsibilities

The City's Department of Planning and Development ("DPD") will oversee Chicago PACE. As the principal planning agency for the City, DPD promotes the comprehensive growth and sustainability of the City and its neighborhoods. DPD also oversees the City's zoning and land use policies, and, through its economic development and housing bureaus, employs a variety of resources to encourage business and real estate development, as well as a diverse and stable housing stock throughout the City.

The City has selected Loop-Counterpoint PACE LLC ("LCP") to serve as the program administrator for the Program (the "Program Administrator") and has entered into an agreement with LCP.

The Program Administrator will be responsible for overseeing and implementing the Program, including: processing applications; statutory underwriting; coordinating among property owners, capital providers, contractors and other building professionals; reporting and arranging for reporting to the City; Program marketing and outreach to property owners, contractors and other building professionals, the Minority- and Women-Owned Business Enterprise ("M/WBE") community and the real estate and environmental associations; and arranging for capital. The primary responsibilities of the Program Administrator will be to:

- Receive, process and approve PACE financing applications
- Manage the day-to-day operations of the Program
- Establish a Program website
- Register contractors and other building professionals, third-party capital providers, and energy consultants
- Publish the Program Guidebook (the "Guidebook") for property owners and contractors and other building professionals
- Provide detailed guidelines on how to apply for and receive PACE financing
- Provide summary statistics and reports to DPD

Form of Assessment Contract

The form of the assessment contract between the City and the record owner(s) of the Eligible Property for which PACE financing is provided is attached to this Program Report as **Appendix B**. The assessment contract contains the terms of the PACE assessment under the Program and the financing to be provided by way of the issuance of bonds [or temporarily through warehouse financing before bonds are issued]⁶. The form of the assessment contract will be completed and, as necessary, modified to include the specific terms of each financing.

Identification of City Officials Authorized to Enter into an Assessment Contract

⁶ Effective January 1, 2019.



The Commissioner of DPD is authorized to enter into assessment contracts.

Maximum Aggregate Annual Dollar Amount

The maximum aggregate annual dollar amount for all financing to be provided by the Program Administrator under the Program is \$2 billion.

Program Eligibility Requirements

Eligible Properties. The Illinois PACE Act prescribes the types of privately-owned properties in the City on which eligible Energy Projects may be installed or modified.

- Commercial
- Industrial
- Multi-family (5 or more units)
- Non-residential agricultural.

Residential properties of 4 units or less and properties owned by any local government or a homeowner/condominium association are not eligible.

Eligible Energy Projects. The types of Energy Projects that are eligible for PACE financing are, but not limited to:

- Alternative energy improvements (e.g., motor vehicle charging stations)
- Energy efficiency improvements
 - ✓ Insulation;
 - ✓ Energy efficient windows and doors;
 - ✓ Automated energy control systems;
 - ✓ High efficiency heating, ventilating, or air-conditioning and distribution systems;
 - ✓ Caulking, weather-stripping, and air sealing;
 - ✓ Energy efficient lighting fixtures;
 - ✓ Energy controls or recovery systems;
 - ✓ Day lighting systems;
 - ✓ [Any energy efficiency project, as defined in the Illinois Finance Authority Act]⁷; and
 - ✓ Any other improvement approved as a utility cost-savings measure by the City.
- Renewable energy resources
 - ✓ wind energy;
 - ✓ solar thermal energy;
 - ✓ photovoltaic cells and panels;
 - ✓ biodiesel;
 - ✓ anaerobic digestion; and
 - ✓ hydropower that does not involve new construction or significant expansion of hydropower dams.
- Water use improvements

The Program website and the Guidebook will further describe the eligibility requirements for each type of eligible Energy Project.

⁷ Effective January 1, 2019.



Other Statutory Underwriting Requirements. The Illinois PACE Act prescribes statutory underwriting criteria that each applicant must satisfy. Those requirements are:

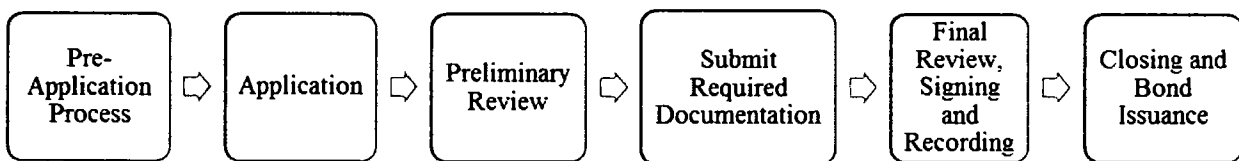
- The property must be located within the Chicago PACE area, which is the City’s limits, as reflected on **Appendix A**.
- There are no delinquent taxes, special assessments, or water or sewer charges on the property.
- There are no delinquent assessments on the property under a PACE program.
- There 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.
- There are no notices of default or other evidence of property-based debt delinquency that have been recorded and not cured.
- 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.
- The maximum amount of assessment cannot exceed 25% of the greater of (1) the assessed value of the property or (2) the appraised value, as determined by a licensed appraiser or approved automated valuation methodology, in an appraisal that is no older than 12 months.
- All work requiring a license, under any applicable law, to install or modify an Energy Project shall be performed by a contractor or other building professional that is registered with the Program and has entered into a registered professional’s agreement with the Program.
- The contractors to be used have signed a written acknowledgement that the City will not authorize final payment to the contractor until the City has received written confirmation from the record owner that the Energy Project 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.
- The property owner shall provide to the City an assessment of the existing water or energy use and a modeling of expected monetary savings for any proposed Energy Project.

Capital Provider Underwriting Requirements. In addition to the statutory underwriting requirements, the applicable capital provider may have additional underwriting requirements. The Program website and the Guidebook will have additional information regarding these requirements and the specific underwriting requirements will be made available to property owners upon request.

City Requirements. All projects will comply with the City’s prevailing wage requirements, residency requirements, and reporting obligations. Projects in which the total project cost is over \$2 million will comply with the City’s minimum Minority and Women-Owned enterprise participation requirements. The Program website and the Guidebook will have additional information regarding these requirements and obligations.

Application Process

The application process is described below.





Pre-Application Process	<ul style="list-style-type: none"> ▪ Property owners can visit the Program’s website or review the Guidebook to: <ul style="list-style-type: none"> - Review the eligibility requirements - Review the terms and conditions of financing - Review the application process - Download or complete an Application to pre-qualify their eligible projects
Application	<ul style="list-style-type: none"> ▪ The Program Administrator will accept applications through the Program website, by mail or over the telephone ▪ Each application must be accompanied by the required application fee and must include: <ul style="list-style-type: none"> - A description of the proposed Energy Project to be installed or modified - A legal description of the eligible property to which the proposed Energy Project will be installed - A completed Economic Disclosure Statement and Affidavit
Preliminary Review	<ul style="list-style-type: none"> ▪ Based on the information in the application and information obtained by the Program Administrator from public sources, the Program Administrator may issue a preliminary approval letter granting approval of the requested financing, in whole or part ▪ The preliminary approval will be subject to verification of all eligibility requirements and any other conditions specified in such preliminary approval letter on or before the closing of the PACE assessment
Submit Required Documentation	<ul style="list-style-type: none"> ▪ The property owner will be required to: <ul style="list-style-type: none"> - Obtain an acceptable property appraisal, if a current one does not exist - Obtain an assessment of the existing conditions and modeling of expected monetary savings for the proposed Energy Project - Acquire a financial commitment from a capital provider, with assistance from the Program Administrator (if needed) - Provide lien holders with notice of intent, and obtain lender consent, to enter into an assessment contract with the City - Submit any other information and documentation requested by the Program Administrator
Final Review, Signing and Recording	<ul style="list-style-type: none"> ▪ The Program Administrator will review all of the required information and documentation submitted by the property owner ▪ If all the information and documentation is satisfactory, the Program Administrator will complete an assessment contract and all other documentation required in connection with assessment contract and submit it to the property owner for signature and thereafter submit it to the City for signature ▪ Assessment contract will be recorded after execution
Closing and Bond Issuance	<ul style="list-style-type: none"> ▪ Following the recording of the assessment contract, the Program Administrator will coordinate with the property owner, the issuer of the bonds and the capital provider, as well as any other service providers, to cause the bonds to be issued [(or funds provided under a warehouse fund)]⁸ and the proceeds thereof applied in accordance with the assessment contract and the bonds [or the warehouse fund]⁹

Method for Determining Interest Rates, Repayment Periods, and Maximum Amount of an Assessment

⁸ Effective January 1, 2019.

⁹ Effective January 1, 2019.



Interest Rates. The interest rate that will be charged pursuant to any assessment contract will be determined by the capital provider based on prevailing market conditions, subject to negotiation by the property owner. The Program Administrator is committed to scaling Chicago PACE and will seek to arrange capital with interest rates competitive with other PACE programs.

Repayment Periods. The repayment period for an assessment cannot exceed the estimated useful life of the Energy Projects being financed. The property owner may request, or the capital provider may require, a shorter period.

Assessment Amount. The assessment cannot exceed 25% of the greater of the assessed value or the appraised value, as determined by a licensed appraiser, of the property. In addition, the maximum amount of an assessment may not exceed the actual cost of the Energy Projects being financed and closing costs, including the cost of materials and labor necessary for installation or modification of the Energy Projects, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the record owner pursuant to the installation and modification of the Energy Projects and the issuance of bonds, including capitalized interest and prepayment fees.

How Assessments Are Made and Collected

The assessment contract will be recorded by the Cook County Recorder of Deeds as a lien on the property, until the assessment, including any interest, penalty and prepayment fee, is paid in full. The lien has the same priority as real estate property taxes.

Assessment installments may be billed either by the Cook County Treasurer's Office, which would include the installments on the property's tax bill or by the City, which would issue invoices through the Program Administrator. The installments generally are payable semi-annually on the first business day in March and September. The payments by the property owner are used to pay the PACE assessment which secure the outstanding bonds [or the warehouse fund]¹⁰. The Program Administrator will notify the Cook County Treasurer's Office if any assessment installment is delinquent. Delinquent assessment installments are subject to the same rights and remedies as delinquent real estate property taxes, including a property tax sale.

Plan to Raise Capital

The maximum aggregate annual dollar amount for all financing to be provided by the Program Administrator under the Program is \$2 billion. The City may issue bonds under the Illinois PACE Act or the Special Assessment Supplemental Bond and Procedures Act, or the City can elect to have the Illinois Finance Authority ("IFA") issue bonds. Subsection (d) of Section 825-65 of the Illinois Finance Authority Act provides for the assignment of the assessment contracts securing such bonds by the City to the IFA. Interim financing prior to the issuance of bonds by the City or the IFA may be provided only by a warehouse fund, except that warehouse funds established by a warehouse lender may only hold assessment contracts for a maximum of 36 months].¹¹

Bonds issued to finance Energy Projects under the Illinois PACE Act shall not be general obligations of the City [or the IFA, as the case may be]¹², but shall be secured by the payments on assessment contracts

¹⁰ Effective January 1, 2019.

¹¹ Effective January 1, 2019.

¹² Effective January 1, 2019.



on benefited property within the City and, if applicable, revenue sources or reserves established by the City [or the IFA]¹³ from bond proceeds or other lawfully available funds.

The Program Administrator is responsible for arranging the capital to acquire the bonds to finance the approved eligible projects. During the pilot stage, the Program Administrator will provide capital from two sources to ensure a sufficient amount of funds are available to acquire the bonds issued by the City [or the IFA or to establish a warehouse fund]¹⁴. The Program Administrator will provide the capital through its affiliate, Counterpointe Sustainable Real Estate and through capital raised by Loop Capital Markets in private placements. All purchasers of the bonds [and warehouse lenders]¹⁵ will be accredited investors or qualified institutional buyers that are approved by the Program Administrator pursuant to requirements that will be set forth in the Guidebook.

After a pilot stage period of 12 months from the closing of the City's first PACE transaction, the Program Administrator will solicit third party capital providers (a "Third Party Capital Provider") to apply to register with the Program to originate assessments to finance Energy Projects and to purchase the bonds to finance such projects. Each approved Third Party Capital Provider will also pay M/WBE Outreach Program Fees (the "Program Fees") for each assessment based on a percentage of the cost of each Energy Project financed with bonds purchased by such Third Party Capital Provider. The amount of the Program Fees will be set from time to time by the Program Administrator with the approval of the Commissioner of DPD. The Program Fees will be outlined in the Guidebook. The Program Fees will be earmarked for M/WBE community engagement by the Program Administrator, including outreach opportunities for the M/WBE contractors and other building professionals.

As Chicago PACE evolves, the Program Administrator will seek to employ more complex bond structures to attract a broader group of capital providers with different investment goals and risk appetites to further drive down the cost of PACE financing in Chicago.

User Fees

The property owner will be charged certain fees and costs in connection with applying for and obtaining financing under the Program. The Program Administrator will not charge a fee for contractors or other building professional to apply for, or to maintain, registration with the Program.

Certain fees are categorized as Costs of Issuance, Annual Fees or Application Fees and can be financed under the assessment contract. The actual amounts and additional details will be provided on the Program website and in the Guidebook.

Cost of Issuance. The cost of issuance includes:

- 1) A program administrative fee, payable to the Program Administrator,
- 2) A City administrative fee, payable to the City in connection with DPD's oversight of the Program and the Program Administrator,
- 3) A private placement fee, payable to Loop Capital Markets for acting as the private placement agent or underwriter of the bonds issued in connection with the Program,
- 4) [An issuer fee, payable to IFA as the issuer of the bonds issued in connection with the Program, but only if IFA is selected by the City to be the issuer.]¹⁶

¹³ Effective January 1, 2019.

¹⁴ Effective January 1, 2019.

¹⁵ Effective January 1, 2019.

¹⁶ Effective January 1, 2019.



- 5) Counsel fees (bond and/or disclosure) and trustee fees, payable to counsel and the trustee in connection with the issuance of the bonds,
- 6) Deposits to reserve funds established in connection with the issuance of the bonds, if applicable,
- 7) Recording fees payable to the Cook County Recorder's Office to cover the cost of recording the Assessment Contract,
- 8) Capital provider origination fee, payable to the applicable capital provider in connection with purchase of the bonds [or the warehouse funds]¹⁷, and
- 9) The additional Program Fee required of Third Party Capital Providers, if applicable.

Annual Fees. The recurring annual fees consist of the annual trustee's fee, the annual servicer's fee and, if the Cook County Treasurer bills the property owner for the annual installment of the assessment, then the fee, if any, of the Cook County Treasurer. None of the recurring annual fees may be capitalized and all the recurring annual fees are subject to either contracts with the City or approval by the City.

Application Fee. There will be no fee for initial prequalification to determine whether a property owner and the property meet the minimum eligibility criteria of the Program. Once an application is submitted to the Program, an application fee will be charged. If the assessment closes, the fee will be applied as a credit against the Program Administration fee payable to the Program.

The Term of an Assessment

The maturity of an assessment may not exceed the useful life of the Energy Project. The expected useful life is determined based on industry standards and manufacturer's warranties. A partial list of types of Energy Projects and their estimated expected useful lives can be found in the Guidebook. When installing multiple Energy Projects, the maximum maturity available is the maturity associated with the greatest financing amount. The maturity of an assessment will generally be in five-year increments, between five and 30 years. The Program reserves the right to approve a maturity shorter than the requested maturity. The maturity of the assessment will be set forth in the assessment contract.

Determining Ratio of Assessment Amount to Property Value for the Program

For the purpose of determining the value of a property for inclusion in the Program, the property will be valued at the greater of (1) the assessed value of the property and (2) the appraised value of the property, as determined by a licensed appraiser or approved automated valuation methodology, in an appraisal that is no older than 12 months. If the proposed energy project qualifies for the Program utilizing the assessed value, the Program Administrator may waive the requirement to obtain an appraisal.

Mortgage Notification and Consent

Under the Illinois PACE Act, at least 30 days before entering into the assessment contract, the record owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the record owner's intent to enter into the assessment contract, together with the maximum principal amount to be financed and the maximum annual 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. 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

¹⁷ Effective January 1, 2019.



and assessment contract and that the City [or, if applicable, its permitted assignee]¹⁸ can foreclose the property if the assessment is not paid has been provided to the City.

Marketing and Education

Marketing Education and outreach activities will be the responsibility of the Program Administrator, who will:

- Plan and execute education/outreach campaigns and informational events
- Develop and provide Chicago PACE orientations
- Create, update, and distribute Chicago PACE educational materials
- Manage and regularly update Chicago PACE website
- Create case studies to highlight the success of the Program
- Create and distribute press releases for other newsworthy items
- Develop and implement a strategic marketing campaign to increase participation of small property owners and M/WBE entities
- Pre-qualify energy professionals

Website Development. Working with the City, the Program Administrator will create a City of Chicago PACE Program website. The website will be fully interactive and provide information about the Chicago PACE Program, including links to legislation, online applications, document retention, third party reviewer portal and property owner portal and contact information.

Education and Outreach Campaign. The Program Administrator will communicate the benefits of the Program to all stakeholders by creating, updating and distributing PACE educational materials throughout the City. Chicago PACE case studies will be created and posted on the Program website on recent newsworthy financings that provide details of the financing. Meetings will be held throughout the City to educate all stakeholders, i.e. Mortgage Lenders, Contractors, Energy Professionals, Developers, and Property Owners, on how to finance energy projects using PACE in Chicago. Property owners can visit Chicago PACE website to learn about eligibility requirements, financing terms and other details and find approved contractors and eligible Energy Projects, including specific products.

MWBE Outreach and Marketing Plan. The Program Administrator will actively conduct outreach to MBEs and WBEs and educate them on how to participate in the Program and work with the City to register certified MBE and WBE firms as pre-qualified contractors. The Program Administrator will also host lunch and learn sessions for all stakeholders throughout the City.

Procedure for Determining Debt Service and Reserve Fund

The issuer of the bonds [and the warehouse lenders or credit providers]¹⁹ may require property owners to make deposits to fund a debt service reserve fund and to fund one or more administrative reserve funds for the payment of administrative costs and expenses of trustees, servicers and administrators of the bonds [or the warehouse funds]²⁰. In each case, such reserve funds may be funded with deposits made at closing, on a periodic basis or both. The obligation to make such deposits and the amounts thereof, if any, will be set forth in the documents relating to the issuance of bonds [or the warehouse funds]²¹, and will be

¹⁸ Effective January 1, 2019.

¹⁹ Effective January 1, 2019.

²⁰ Effective January 1, 2019.

²¹ Effective January 1, 2019.



specified and described in the Guidebook. The City will not fund or establish a debt service reserve fund under the assessment contract.

Additional Quality Assurance and Antifraud

Quality assurance protocols serve to prevent improper or low-quality installation or modification of Energy Projects and protect against fraud and abuse of the Program. The Program will institute quality assurance protocols administered by the Program Administrator and overseen by DPD. Quality assurance protocols and procedures are subject to review and adjustment from time to time by the Commissioner of DPD based on applicable City, State and federal standards. Details on the current quality assurance protocols and procedures are outlined in the Guidebook. Despite the presence of these protocols and procedures, responsibility for the successful operation of an Energy Project is that of the property owner and its registered professionals. None of the City, the Program Administrator, any issuer of bonds, capital provider, underwriter or private placement agent, trustee, servicer or any of their respective directors, managers, officers, employees, advisors, agents shall have any liability for the selection, installation and modification and operation of any eligible Energy Project.

APPENDIX A TO PROGRAM REPORT

MAP OF THE CITY OF CHICAGO

(Chicago PACE Area)

(Attached)

APPENDIX B TO PROGRAM REPORT
FORM OF ASSESSMENT CONTRACT

CITY OF CHICAGO
PACE PROGRAM

ASSESSMENT CONTRACT

THIS ASSESSMENT CONTRACT (this “Contract”), dated as of _____, 20____, is by and between the City of Chicago, a municipal corporation and home rule unit of local government of the State of Illinois (the “City”) and _____ as the titleholder or owner of the beneficial interest (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 “assessment contracts” (as defined in the Act) on property (as defined in the Act) benefitted;

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 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 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 or loan servicers of mortgages recorded against the Property, and the Program Administrator has issued an approval of the Record Owner’s PACE 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, interim financing prior to the issuance of bonds may be provided through a Warehouse Fund (as defined in the Act) as further described in Exhibit A;

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 to the Authority 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 an 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 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) pursuant to the Special Assessment Supplemental Bond and Procedures Act or (ii) upon assignment of this Contract to the Authority, by the Authority pursuant to the Act and the Authority Act (the “Bonds”) and shall be secured by the Assessment to pay the cost of the Financing Purposes, and if applicable, interim financing prior to the issuance of Bonds may be provided through a Warehouse Fund. The per annum interest rate born by the Bonds shall not exceed the Maximum Interest Rate specified in Schedule I. The final maturity date of the Bonds shall be no later than the Final Maturity Date specified in Schedule I.

(c) *Interest; Assessment Installments.* Interest on the Assessment shall begin to run from the date of the Bonds and shall be computed at the rate specified in the Bonds. The unpaid Assessment shall be payable in installments corresponding in number and in the pro rata share of the proportionate amount to the number of installments and principal amount of Bonds maturing or becoming subject to mandatory prior redemption in each year. An annual proportion of the Assessment shall be payable in each fiscal year preceding the date of maturity or mandatory prior redemption date of each of the Bonds, sufficient to pay the pro rata share of the Bonds when due.

(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 property are payable, 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 property. The City may delegate the authority to collect the Assessments hereunder to the Program Administrator.

(e) *Administrative Expenses.* In addition to the annual installment of the Assessment described in subsection (c) of this Section, the City may (or may direct the Program Administrator on behalf of the City 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 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.

Section 4. Record Owner's Representations and Warranties

The Record Owner represents and warrants to the City and the Authority, which representations and warranties shall be true and correct as of the Effective Date and at all times thereafter.

(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 the disbursement agreement, if applicable.

(d) *Title.* The Record Owner has good and insurable title to the Property, subject only to the liens and encumbrances approved by the City or the Program Administrator ("Permitted Encumbrances") and set forth in Exhibit A hereto, if applicable.

(e) *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) 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 and ordinances and any restrictive covenants affecting the Property.

(f) *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 between the Record Owner and _____, dated _____, pertaining to the construction and installation of the Project (the "Construction Contract"). The City or the Program Administrator has approved the Budget. 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.

(g) *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.

(h) *Insurance.* The Record Owner has provided to the City or the Program Administrator satisfactory evidence of current insurance policies on the Property and has provided evidence that such insurance shall be maintained in force during the term of the Assessment. 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 and any Bond Trustee shall be named as an additional insured (mortgagee/loss payee) on all insurance policies required hereunder.

(i) *PACE Application.* All representations, warranties, statements, exhibits, instruments and other documents contained in or included as a part of the PACE Application are true, correct and complete as of the Effective Date.

(j) *No Impairment.* No fraud, error, omission, misrepresentation, negligence or similar occurrence with respect to the Property, Plans 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 or Project, that would impair in any way the rights of the City or the Program Administrator in the Property, Plans or Project or that violated applicable law.

(k) *Environmental Matters.* The Record Owner does not and will not engage in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of hazardous materials or hazardous wastes, as defined in applicable state law, or any other federal, state or local environmental laws or regulations, and the Property has not been so used previously, except for such matters shown on Schedule II attached hereto (the "Environmental Schedule"), if applicable. Except as shown on 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.

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 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.] If, in the opinion of the City or the Program Administrator, after thirty (30) days' written notice to Record Owner, the construction is not proceeding with reasonable dispatch, the City or the Program Administrator may (i) request that Record Owner remove and replace the general contractor with a general contractor acceptable to the City or the Program Administrator or (ii) direct the Permitted Assignee to deny any disbursement of Bond proceeds or interim financing provided by a Warehouse Fund, if applicable, until such time as the construction resumes proceeding with reasonable dispatch

(c) *Protection Against 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) the Permitted Encumbrances, if applicable, (iii) liens, if any, for taxes imposed by any governmental authority not yet due or delinquent, and (iv) 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 and all sources and uses of funds with respect to the Project, a current actual to Budget analysis and 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.

(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) *Damage or Destruction.* The Record Owner shall promptly notify the City or the Program Administrator if the Property or Project is damaged or destroyed by fire or any other cause. Upon the occurrence of such casualty, the insurance proceeds will be applied to redeem the Bonds or the outstanding balance of any interim financing provided by a Warehouse Fund, plus any applicable fees, unless the City or the Program Administrator agrees in its commercially reasonable discretion to the application of the insurance proceeds to the restoration of the Project or Property. Neither the City nor the Program Administrator shall have any obligation to make additional PACE Funding available upon the occurrence of a casualty. In the event restoration of the Property or Project is approved by City or the Program Administrator, the Record Owner shall immediately proceed with the restoration thereof and shall restore the Project in accordance with the Plans or other similar plans approved by the City or the Program Administrator. If, in the commercially reasonable judgment of the City or the Program Administrator, said proceeds of insurance are insufficient to complete the restoration, the Record Owner shall deposit with the City or the Program Administrator such amounts as are necessary, in the sole judgment of the City or the Program Administrator, to complete such restoration in accordance with the Plans. Disbursement of proceeds of insurance (plus any non-PACE funding provided by the Record Owner) shall, at the election of the City or the Program Administrator (made by written notice to the Record Owner), be deposited with the Permitted Assignee and disbursed under the disbursement agreement, if applicable, or, if completion had been achieved before the casualty, then pursuant to the Indenture relating to the Bonds.

(g) *Condemnation.* If the Project or the Property or any part thereof, or any interest therein or right accruing thereto, including any right of access thereto affecting the Property or any part thereof, are taken temporarily or permanently by condemnation or subject to an imminent threat of condemnation, the Permitted Assignee's obligation to make further disbursement of Bond proceeds or interim financing provided by a Warehouse Fund, if applicable, hereunder shall immediately terminate unless, in the judgment of the City or the Program Administrator, the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the City or the Program Administrator determines (in its sole discretion) that the Project can be so restored, then the rights and obligations of the City or the Program Administrator and the Record Owner subsequent to a taking by condemnation or imminent threat thereof and the disbursement of any condemnation proceeds actually paid to the Permitted Assignee and undisbursed Bond proceeds or interim financing provided by a Warehouse Fund, if applicable, shall be the same as described in the immediately preceding paragraph with regard to insurance proceeds.

(h) *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 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, and any and all officials, agents, bond trustee, employees, attorneys and representatives of either 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 County. 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 respective 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.

(i) *[Engineering Commissioning and Verification.*

(i) If the PACE Funding exceeds \$_____, then, to verify that the Project is installed and performs according to projections modeled in the [Energy Assessment][Renewable Energy Feasibility Study] (the "Project Report") submitted as part of the PACE 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 (the "ECV Report") to the City or the Program Administrator. The ECV 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;

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

(3) Description of components and systems that exceed the Record Owner's project requirements and those which do not meet the requirements and why; and

(4) A summary of all issues resolved and unresolved and any recommendations for resolution.

(iii) In the event Record Owner fails to complete the ECV work by the Outside Completion Date (as defined herein), the Program Administrator may engage an ECV

provider to complete the ECV scope of work for the Project. The City or the Program Administrator may add the cost for such work, along with any of its reasonable incidental costs in overseeing such work, to the Assessment and collect all such amounts required to complete the ECV scope of work with the next assessment installment due.]

Section 6. Lien; Foreclosure.

(a) *Lien.* The Assessment, and each installment thereof and the interest and 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 Permitted Assignee has the right to enforce the lien through tax sale or through a judicial foreclosure action that could result in a sale of the Property for the payment of the delinquent installments, associated penalties and interest, and all costs of suit, including attorneys' fees. The Record Owner acknowledges that the Permitted Assignee may obligate itself, through a covenant with the owners of the Bonds, to exercise judicial foreclosure rights 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 Permitted 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 in accordance with [the method set forth in the Assessment] that each parcel benefitted shall be assessed in accordance with the benefits to the original lot or parcel plus costs and fees of making the apportionment].

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 the

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 (provided, however, that this waiver shall apply only if the Bonds are issued through the Authority Act).

(a) 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 Property will be responsible for payment of the Assessment regardless of whether the Project is properly installed, operated, maintained or performs as expected.

(b) 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 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 reasonable out-of-pocket litigation costs and reasonable 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 reasonable out-of-pocket litigation costs and reasonable 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, their respective agents and

representatives the right to enter at any reasonable time, upon reasonable notice, to inspect the Improvements. The Record Owner further hereby grants the City, the Program Administrator, the Authority, any Bond trustee, their respective agents and representatives the right to examine and copy any documentation relating to the Improvements.

Section 14. PACE Application. The Record Owner hereby represents and warrants to the City or the Program Administrator, that the information set forth in the PACE 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 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 and the Record Owner.

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. The City intends to delegate certain of its functions under this Contract to the Program Administrator and may pledge and assign this Contract to a Permitted Assignee as security for the Bonds or interim financing provided by a Warehouse Fund, if applicable.

Section 17. Exhibits. Exhibit A and Schedule I 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 and the Record Owner 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 Act.

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 Cook County; provided, however, that if Bonds are issued through the Authority Act, such action shall be filed and maintained in the Circuit Court of Cook County; provided further, 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 any Permitted 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 _____. If the Record Owner fails to return this Contract so executed to the City or the Program Administrator by the indicated 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.

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

City: Authorized Signatory

Name (*Please Print*)

Signature

Date of Execution

EXHIBIT A

DESCRIPTION OF PROPERTY, DESCRIPTION OF PROJECT, DESCRIPTION OF WAREHOUSE FUND, IF APPLICABLE, TRANSACTION DOCUMENTS, PERMITTED ENCUMBRANCES, OUTSIDE COMPLETION DATE, IDENTIFICATION OF CIRCUIT COURT, AND NOTICE INFORMATION

Description of Property:

Record Owner(s) Name(s):

Property Address:

PINS:

Legal Description:

County: Cook

Description of Project:

The Improvements consist of the following:

Description of Warehouse Fund, if applicable:

Terms:

Transaction Documents:

Permitted Encumbrances:

Outside Completion Date:

Identification of Circuit Court for Foreclosure Actions:

Notice Information:

[PACE Program Notice Information]

[Record Owner Notice Information]

SCHEDULE I

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

Assessment:

The amount of the Assessment is \$_____ (the "Assessment Amount"), of which \$_____ is allocable to the cost of the Project, \$_____ is allocable to incidental expenses, \$_____ is allocable to capitalized interest, and \$_____ is allocable to a required debt service reserve. 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].

Bonds:

The Maximum Interest Rate to be borne by the Bonds is ___% per annum.

The Final Maturity Date of the Bonds shall be _____, _____

Estimated Maximum Annual Assessment Installments:

The schedule of the estimated maximum annual installments of the Assessment is based on the following assumptions:

1. Bonds allocable to the Assessment are issued in an amount equal to Assessment Amount.
2. The Bonds bear interest at a rate equal to the Maximum Interest Rate.
3. The final maturity date of the Bonds is the Final Maturity Date.
4. The Assessment Interest Rate is ___%.
5. The total administrative fees, recording fees and other fees and costs added to your assessment is \$_____.

Tax Year (commencing July 1)	Interest	Principal	Total Assessment	Annual Administrative Assessment Fee*	Total Estimated Contractual Assessment Payment

*Estimated, subject to change

UPON THE ISSUANCE OF THE BONDS, THE ACTUAL ANNUAL ASSESSMENT INSTALLMENTS WILL BE DETERMINED IN ACCORDANCE WITH THE ACT, AS DESCRIBED IN THIS CONTRACT. THE SCHEDULE OF ANNUAL ASSESSMENT INSTALLMENTS SHALL BE SPECIFIED IN THE “PAYMENT OF CONTRACTUAL ASSESSMENT REQUIRED” TO BE RECORDED BY THE ADMINISTRATOR IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF COOK

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 (IF APPLICABLE)

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CHICAGO October 31, 2018

To the President and Members of the City Council:

Your Committee on Finance having had under consideration a substitute ordinance authorizing the establishment of the Chicago Property Assessed Clean Energy (PACE) Area and Program to finance acquisition and construction of energy projects.

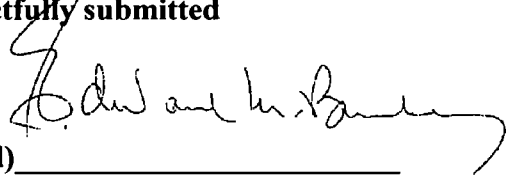
O2018-5032

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Substitute Ordinance Transmitted Herewith.

This recommendation was concurred in by _____ (a viva voce vote of members of the committee with _____ dissenting vote(s)).

THE CITY CLERK TO PUBLISH THIS ORDINANCE IN SPECIAL PAMPHLET FORM.

Respectfully submitted



(signed) _____

Chairman