

**COUNTY OF KENDALL, ILLINOIS
ECONOMIC DEVELOPMENT COMMITTEE
KENDALL COUNTY HISTORIC COURTHOUSE
3rd Floor Courtroom; 109 W. Ridge Street; Yorkville**

**Friday, October 30, 2020 at 9:00a.m.
MEETING AGENDA**

- 1. Call to Order**
- 2. Roll Call – Audra Hendrix (Chair), Scott Gryder (Vice Chair), Amy Cesich, Matthew Prochaska, Robyn Vickers**
- 3. Approval of Agenda**
- 4. Approval of September 25, 2020 Meeting Minutes**
- 5. Committee Business**
 - *Discussion of Kendall County Fair Association Revolving Loan Application*
 - *Discussion and Approval of Oswego Best Western RLF Pre-Application*
 - *Discussion on C-PACE Program with The Illinois Energy Conservation Authority NFP*
- 6. Updates and Reports**
- 7. Chair’s Report**
- 8. Public Comment**
- 9. Executive Session**
- 10. Adjournment**

Join Microsoft Teams Meeting
+1 309-248-0701 United States, Rock Island (Toll)
Conference ID: 184 255 058#

...If special accommodations or arrangements are needed to attend this County meeting, please contact the Administration Office at (630) 553-4171, a minimum of 24-hours prior to the meeting time

COUNTY OF KENDALL, ILLINOIS
Economic Development Committee

Meeting Minutes
Friday, September 25, 2020

Call to Order

The meeting was called to order by Committee Chair Audra Hendrix at 9:00 a.m.

Roll Call

Attendee	Status	Arrived	Left Meeting
Amy Cesich	Present		
Scott Gryder	Here		
Audra Hendrix	Here		
Matthew Prochaska	Here		
Robyn Vickers	Here		

Others Present: Scott Koeppel

Approval of Agenda – Member Gryder made a motion to approve the agenda, second by Member Prochaska. **With five members present voting aye, the motion carried by a vote of 5-0.**

Approval of August 28, 2020 Meeting Minutes – Member Gryder made a motion to approve the August 28, 2020 meeting minutes, second by Member Prochaska. **With five members present voting aye, the motion carried by a vote of 5-0.**

Committee Business

- ***Discussion on C-PACE Program with The Illinois Energy Conservation Authority NFP*** – Mr. Koeppel stated that this topic has been discussed for the last two meetings, and that after the last meeting he contacted the Illinois Conservation Authority to clarify questions that the committee had from the last presentation about C-Pace.

Anna Maria Kowalik, from the Illinois Energy Conservation Authority NFP, explained the Commercial Property Assessed Claim Energy financing tool that has been established in Kane, DuPage, Peoria, McHenry, Ogle Counties, and growing the Counties out from the Collar Counties and across Northern Illinois.

Ms. Kowalik stated that C-PACE is an up to 100 percent financing tool of energy efficiency projects, or energy efficiency and savings components of any retro fit or new construction project. It is a debt instrument that is repaid via the tax bill through an assessment line item. The benefits for property owners include a non-course product that is giving them greater benefit of more dollars for less application processes than conventional lending, adds to the bottom line, improves their NOI, and is something that can help reduce the owner equity in the project.

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Economic Development Committee

Committee Question: Can the County add additional restrictions to the program such as project size, industrial versus office space, and set additional restrictions on it so that certain things are either allowed or not allowed.

Mark Pikus from the Illinois Energy Conservation Authority NFP, stated that there are baselines and guidelines, but the County constructs and can customize the program according to their local needs.

Committee Question: What happens with outstanding payments if a property is foreclosed and the taxes are not being paid? Mark Pikus stated that this would be treated as any other delinquent tax and would go through the County Tax Sale. The County would in no way be responsible for any payment of taxes or loan payments, but that delinquency would be the risk on the private capital provider and the investment in the project.

Committee Question: Would there ever be a scenario when the loan would be resolved on a specific property? Mr. Pikus said that there wouldn't be a loan negate, but the risk or loss would be on the private capital provider.

Committee Question: Can the County assess a fee as part of the program to cover the cost because there will be additional work in the County Treasurer's Office, Assessment Office and Clerk's Office Mr. Pikus stated that they recommend a one percent upfront closing cost fee, and a servicing fee charge.

Committee Question: Is there any project management required either from the Contractors, can it be added, and is it necessary? Mr. Pikus stated that there is monitoring that the improvements have been implemented, and that the funds have been utilized properly. The Illinois Energy Conservation Authority NFP receives those monitor reports, but the County does have an oversight committee that is involved in the approval, the specific improvements. But, the County can implement some other type of monitoring system if desired.

Ultimately, the County Board would be assigning the Oversight Committee comprised of County elected officials, the authority to authorize future projects on behalf of the County Board.

The committee asked Mr. Koepfel to meet with the County Clerk, Treasurer, and Chief Assessment Officer prior to the October Committee of the Whole meeting, to explain the program and get their input on the additional work that each office would be facing.

There was consensus by the Committee to forward the item and a draft ordinance to the October 15, 2020 Committee of the Whole meeting, and if it's agreeable to then forward the Ordinance to the State's Attorney's Office for legal review.

- **Discussion of Revolving Loan Fund Pre-Application from Oswego Best Western** – Mr. Koepfel reviewed the pre-application from the Oswego Best Western, and said his memo addressed questions that he had regarding the pre-application. Mr. Koepfel reported that

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the Best Western is requesting a \$200,000 loan to complete a renovation project in the lobby area they began in 2019. They had taken a \$1.8 million from Old Second Bank, but have stalled with completion of the renovation because they were going to utilize revenues that have fallen off this year. They are current on their loan to Old Second, but they did forbearance. There is no certainty of jobs added, this is a job retaining effort.

Mr. Koeppel stated that the New Recapture Strategy has a limit of \$100,000. Mr. Koeppel voiced concerns about hospitality and revenue in 2019, and they estimate a negative \$125,000 this year, and an estimated profit in 2021 of \$140,000.

Discussion of other hospitality loans in the County that failed, what type of collateral the County would require, and whether Best Western has applied for other funding such as CARES Act or other state grants.

The committee wanted Mr. Koeppel to voice the Committee's concerns, get additional information on their plans, if they are prepared to pay off their loan out of forbearance and totally pay it off, and on any grant funding they are waiting on, and consult with Old Second on the applicant and this potential loan.

- *Downstate Small Business Stabilization Program Update* – Mr. Koeppel updated the committee on the submitted applications totaling \$1,086,000, and approved grant funding for small businesses in the County totaling \$242,750. Mr. Koeppel stressed that the state has additional funding to disburse.
- *Discussion of Revolving Loan Fund Payments and Covid-19* – Discussion on the extension of the Revolving Loan fund payments. **There was consensus by the committee to reinstate normal loan schedule and payments as usual.**

Updates and Reports – Mr. Koeppel updated the Committee on the Kendall Fairground Association Application, and said he communicated with the fairgrounds that a refinance doesn't fit the scope of the revolving loan fund recapture plan. Mr. Koeppel also discussed the fairgrounds and concerns about Covid-19. The Fairgrounds reported they have a car show and two outdoor weddings scheduled in the near future, which they said show the promise of the fairground association's ability to repay a loan. After discussions with Mr. Koeppel the Fairgrounds revised their request to \$135,800. Mr. Koeppel reminded the committee that the maximum allowable loan to a private business is \$100,000.

There was consensus by the committee to invite the Fairground Association to the October EDC meeting to share their plans for winter month revenue and their available collateral. The committee also would like the Fair Association to complete an application prior to that meeting.

Chairs Report – None

Items for the October 6, 2020 County Board Meeting – None

COUNTY OF KENDALL, ILLINOIS
Economic Development Committee

Items for the October 15, 2020 Committee of the Whole Meeting

- *Discussion and Approval of C-PACE Program with The Illinois Energy Conservation Authority NFP*

Public Comment – None

Executive Committee – Not needed

Adjournment - Member Gryder made a motion to adjourn, second by Member Prochaska. **With five members present voting aye, the motion carried by a vote of 5-0.** There being no objection, the Economic Development Committee meeting was adjourned at 10:04a.m.

Respectfully submitted,

Valarie McClain
Administrative Assistant & Recording Secretary

**KENDALL COUNTY
RF PRE-APPLICATION FACT SHEET**

To qualify as a RF project, you will be asked to provide the following information in convenient format for your company. Please mark attachments with corresponding numbers below. We would like to review these documents with your bank or lending institution participating in the project. Please return to: Kendall County Administration / Economic Development kendallede@co.kendall.il.us or fax number (630) 553-4214. **If pre-approved, an Application for Revolving Fund Financial Assistance must be completed and submitted to the Kendall County Office of Administrative Services.**

Business Name: Kendall County Fair Association
Legal Name of Borrower:
Home Address: Home Phone:
Contact Person: LeaAnn Koch Title: President
Business Address: 10826 Rt71 Business Phone: 630-551-2860
Email: treasurer.kcf@gmail.com Fax:
Type of Business/Products Produced, Services Provided:
Fairgrounds, building rentals, grounds rentals

Number of Years in Business: 32
Number of Years Operating at Present Business Address: 32
Business Ownership: Sole Proprietorship Partnership
501 Corporation Other(specify)

Principal Owners (Individuals, Address, and Phone of Those Owning 20% or more)

General location of project: (s)
Area south of Stagecoach Pavillion
Stage Coach Pavillion & Smith Hall
Education Building

Describe company product or service provided at the project site

Describe proposed use of loan funds:

Reduce Education Building Mortgage, Improve Stagecoach Pavillion
for rental usage, Construct small pavillion with dedicated
rest rooms, improve floor surface in Smith Hall.

Collateral/Security offered for RF Loan:

Fairgrounds

Total number of jobs the company will create or retain in Kendall County:

Created: Retained: 6 Total Number of all jobs:

Number of jobs for low and moderate income individuals:

Estimated date to complete job creation and retention above:

Present Number of Employees:

Full Time: 1 Part Time: 5

Anticipated Number of Employees:

1 Year Full Time: _____ Part Time: _____

2 Year Full Time: _____ Part Time: _____

Total loan funds requested (Max \$15,000 x number of jobs created/retained, or 49% total project cost, whichever is less):

Approached Lending Institution? Yes x No _____

Coate head count per year approx. 23,000

If Checked "No", Please Explain:

If Checked "Yes", Please Complete the Following:

Name of Lending Institution: Heartland Bank

Address: Aurora wmarquardsen@hbtbank.com

Contact Person/Title: William Marquardsen VP

Phone Number: 815-439-5271 ext 3779

Please State the Amount, Interest Rate, and Term of the lender's loan: \$69,725.00

9-1-2023, rate 7.5% Account is reviewed every March
 Permission to contact lender (authorized signature here):

Site Regulations

Will any of the project activities be located in a special flood hazard area?

Yes No

Is the site annexed to a municipality?

Yes No

What is the current zoning for the site? A 1

Is the site currently zoned for the project's proposed activities?

Yes No

If No, what is the anticipated date zoning will be finalized? _____

Business Cash Flow

Revenue

Prior Years		Current Year	
2 Yr	1 Yr	YTD @ mm/dd/yyyy	Projected Year End
507,779	426,109	168,454	20,000

Next Projected Year					
JAN	FEB	MAR	APR	MAY	JUN
JUL	AUG	SEP	OCT	NOV	DEC

Operating Expense

Prior Years		Current Year	
2 Yr	1 Yr	YTD @ mm/dd/yyyy	Projected Year End
479,379	477,227	108,503	138,000

Next Projected Year					
JAN	FEB	MAR	APR	MAY	JUN
JUL	AUG	SEP	OCT	NOV	DEC

Business Loans & Credit

Institution/Bank	HEARTLAND		
Value			
Vehicles/Equipment/Land			
Purchase Amount			
Est. Current Value			
Balance Owed	69,725 ⁰⁰		
Term (start and end year)			
Payment Amount			
Required Payments/Year	7,500		

Business Assets

Institution/Bank	ALLIED FIRST BANK		
Current (checking insurance, etc.)	Liquid acct., life	Asset life	
Value	19,633		
Vehicles/Equipment/Land	1,048,92		
Purchase Amount			
Est. Current Value			
Balance Owed			

Personal Loans & Credit

Institution/Bank				
Value				
Vehicles/Equipment/Land				
Purchase Amount				
Est. Current Value				
Balance Owed				
Term (start and end year)				
Payment Amount				
Required Payments/Year				

Personal Assets

Institution/Bank				
Current Liquid Asset (checking acct., life insurance, etc.)				
Value				
Vehicles/Equipment/Land				
Purchase Amount				
Est. Current Value				
Balance Owed				

Please provide a credit report from one of 3 credit bureaus within the last 60 days.

www.equifax.com

www.transunion.com

www.experian.com

*****Please redact your entire Social Security Number (SSN) prior to submitting a credit report or any other document containing a portion of or an entire SSN. *****

*****If any or all of a SSN is identified on any document prior to submitting to the Administrative Office, our office will redact any and all references to a SSN upon receipt of said documents**

Please provide business references

Contact Name			
Business Name			
Address			
City, State, Zip			
Phone			
Nature of Relationship			

Priority Project

	Approx. cost
1 Smith Hall floor coating (estimate provided)	\$30,400 5,219.40
2 Refinance Education Building mortgage, currently 7-1/2%	\$69,348 balance
3 Pour concrete floor in poultry building - (storage improvement) (estimate provided)	\$20,000
4 Erect new rabbit pavilion (excludes bathrooms & concrete floor) (estimate provided)	\$48,000
5 Roll-up curtain sides for livestock pavilion	\$30,000 guesstimate



1020 N. WASHINGTON
 9200 OLNEY AVENUE
 NASHVILLE, IL 60543

Quotation

QUOTE #	NA002147
LOCATION	020
DATE	08/25/20
PAGE	1 OF 1

BILL TO

KEMPLUS
R. J. KUHN INC.
585 ROUTE 31
OSWEGO, IL 60543

SHIP TO

R. J. KUHN INC.
585 ROUTE 31
OSWEGO, IL 60543

QUOTE DATE 08/25/20	EXPIRE DATE 07/25/20	REQUIRED DATE	REFERENCE NUMBER	PAYMENT TERMS 15% 30 DAYS NET 30
WRITTEN BY MIKE PETKOVICH			CONTACT	SHIP VIA BEST WAY
FREIGHT TERMS FREIGHT TERMS AS AGREED			JOB NUMBER	SALES REP 0800 AURORA STORE



ELE114 30 67.990 EA 2,029.70
CORDOVAN ELEMENTS STAIN

POLITHANEMC1G 20 139.980 EA 2,799.60
POLITHANE MC URETHANE 1G.
 THE ABOVE MATERIAL IS TO STAIN
 AND POLYURETHANE 6000 SQUARE
 FT.

1SLAMB 1 4.490 EA 4.49
SIKAFLEX 1BLM - MEDIUM BRONZE
 HERE IS THE PRICE PER TUBE OF
 CAULK. COVERAGE IS ROUGHLY 6FT
 PER TUBE PENDING THE WIDTH OF
 THE JOINT.

REMERCHANDISE TOTAL	HANDLING	DISC CHARGE	TAX	FREIGHT	QUOTE TOTAL
4,843.00	0.00	0.00	375.41	0.00	5,218.41

Accepted:

By: _____
 Date: _____

KCF COPY

DON BOHR & SONS, INC

Concrete Contractors

1980 Stephen Street

Aurora, IL 60502

Office (630) 898-3393 Fax (630) 898-3370

Cell (630) 494-9126

Email dbs.larry@att.net

REF.

Date: August 8, 2018

Estimate Number 18-81

To: Kendall County Fair Board

ESTIMATE

Job Location: Poultry Building Floor

Description: 6" x 96' x 80'	Amount
Remove excess stone and place on site, compact sub grade to minus 6" , place 6 mil vapor barrier and # 6 mesh mats.	
Pour 6" floor with either hard trowel finish or light broom finish saw cut control joints and seal with cure and seal compound.	\$ 18,720.00
If concrete is supplied by owner deduct \$ 5,800.00	
Total	\$ 18,720.00

Thank you,

Lawrence E Bohr, President

We appreciate your business!



PROPOSAL

Rabbit Pavillion

KCF
copy

OWNER/PURCHASER

Jeff Nakaerts
Kendall County Fair
Route 71
YORKVILLE, IL 60560
Phone: (630) 636-8517
nkrts54@gmail.com

BUILDING SITE

Route 71
YORKVILLE, IL 60560
County: KENDALL

BUILDER

Wise Construction Services Inc.
1107E S Bridge St
Yorkville, IL 60560
Phone: (630) 553-6350

New Wing 1 SPECIFICATIONS: 40' W x 80' L x 10' ICH

Bay Spacing: 8 @ 10' 0"

Roof Pitch: 3:12

Trusses: (9) SLC; All trusses with a 30 PSF Ground Snow Load

OPTION SPECIFICATIONS:

Wall Items

Open Endwall Full Wall to ICH on Left Wall	Full Wall
Open Endwall Full Wall to ICH on Right Wall	Full Wall
Open Sidewall (No W9 Standard Clearance) on Bottom Wall	1 EA
Open Sidewall (No W9 Standard Clearance) on Top Wall	1 EA

Additional Items

Precast Footing 3-1/2" x 14"	-24 EA
Poured Footing 8"x18"	24 EA
Add 2 80# Bags of Sacrete w/ Anchorage Nails	24 EA
8" Concrete Collar Around Columns at Ground Line	24 EA
Wick Construction Services	

PROJECT ITEMS:

Structural Basic Plan Set	1 EA
Illinois Structural Engineer Seal on Plan Set	1 EA
Engineer Calculation Packet for Plan Set	1 EA
Illinois Engineer Seal on Calculations	1 EA

COLORS:

Roof		Wall		Doors & Windows	
Eave/Fascia/Gutter	Hunter Green	Gable Steel	Ivory	Open Bay J-Trim	Hunter Green
Ridgecap/Ridgevent	Hunter Green	UCR Trim at Corner	Hunter Green	Open Bay L-Trim	Hunter Green
Roof Steel	Hunter Green	Wall Sign	Ivory		
UCR Trim at Rake	Hunter Green	Wall Steel	Ivory		

CONTRACT NOTES



PROPOSAL

Rabbit Pavillion

(1) Includes extra concrete at footing and 8" Collar Tie at ground level.

(2) Includes Columns that are 3 ply with face board added.

Proposal Includes:

Stamped Plans for a permit for Kendall County

Delivery

Unloading

Prevailing Wage Rate Labor For Kendall County.

Workmans Comp

Liability

Builders Risk Insurance

Cleanup

Total Proposed Investment: \$47,264

VALID DATES

30 Days

Here is the list of improvements for the Kendall County Fairgrounds.

1) Smith Hall concrete floor restoration.	\$9,800.00
2) New covered pavilion on the east side of the grounds with restrooms.	\$78,000.00
3) Grain Bin outdoor bar	\$7,000.00
4) Poultry Building needs a concrete floor	\$20,000.00
5) Rose Garden retaining wall and step repairs	\$8,500.00
6) Removable tarp coverings to enclose Stagecoach Pavilion	\$12,500.00

COUNTY OF KENDALL, ILLINOIS



SCOTT KOEPPPEL
COUNTY ADMINISTRATOR
KENDALL COUNTY OFFICE BUILDING
111 WEST FOX STREET, SUITE 316
YORKVILLE, ILLINOIS 60560
630.553.4171

October 19, 2019

To: Economic Development Committee
From: Scott Koeppel, County Administrator
Re: Correspondence with Loan Applicant Oswego Best Western

Hello Anita,

The Kendall County Economic Development Committee had the following questions and comments.

1. At this time the revolving loan fund recapture strategy only allows for \$100,000 for loans to private businesses.
2. Did you apply for BIG grant through the state?
3. Can you please supply more information about the renovations?
4. What month in 2021 do you plan to pay off the old second bank loan? There is some confusion (maybe on my part) about the payoff date and the COVID-19 forbearance.
5. If the loan was approved what would you consider for collateral?

Scott Koeppel

Hi Scott,

\$100,000 would be fine if that is all we can get. Any amount will hopefully help us make it through the winter months head when business traditionally slows down anyway.

We did apply for the BIG grant from the state and are waiting to hear back.

Renovations included: new mattresses, carpet, tile, paint, window treatment, artwork and seating in all the guest rooms. Included new hallway wall vinyl as well as new carpet there too. Lobby work still needed to be completed which will include new carpet, tile and wall vinyl as well. Relocated the business center and a new sundry area for guest use. It also included new paint for the outside of the building as well as new stone on the front entrance area.

Loan comes due in April and will be refinanced at that point. For the last 6 months we worked with Old Second to just make interest only payments.

Collateral would be the building and furniture and fixtures inside.

Hope this helps and look forward to hearing back.

Thank you,

Anita Patel
Best Western Oswego Hotel

**PROGRAM DEVELOPMENT AND
ADMINISTRATIVE SERVICES AGREEMENT**

BETWEEN

THE COUNTY OF MCHENRY, ILLINOIS

AND

**THE ILLINOIS ENERGY CONSERVATION
AUTHORITY NFP**

Dated as of

_____, 2020

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EXHIBITS

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PROGRAM DEVELOPMENT AND ADMINISTRATIVE SERVICES AGREEMENT

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

RECITALS

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

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

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

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

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

AGREEMENT

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

ARTICLE 1 ADMINISTRATOR SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Commercial General Liability insurance with a minimum coverage of \$2,000,000 per occurrence, \$2,000,000 aggregate;
- (b) Employer's Liability insurance with a minimum coverage of \$1,000,000 per occurrence, and \$1,000,000 in the aggregate;
- (c) Automobile Liability insurance with a minimum coverage of \$1,000,000;
- (d) Professional Errors and Omissions insurance with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- (e) Personal and Advertising Injury insurance with a minimum coverage of \$1,000,000 per occurrence and \$1,000,000 in the aggregate;
- (f) Medical expense insurance with a minimum coverage of \$5,000 per employee;
- (g) Umbrella insurance with a minimum coverage of \$1,000,000 (including retention for self-insured hazards in an amount of \$1,000,000); and
- (h) Workers' Compensation and Employer's Liability insurance in the event the Administrator has any employees.

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

**ARTICLE 2
COUNTY OBLIGATIONS.**

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

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

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

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

**ARTICLE 3
ADMINISTRATION FEES**

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

**ARTICLE 4
TERMINATION**

4.1 Administrator Events of Default.

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

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

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

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

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

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

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

4.2 County Events of Default.

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

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

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

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

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

4.3 Termination for Force Majeure.

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

4.4 Effect of Termination.

(a) **Termination Notice.** A Party terminating this Agreement pursuant to this Article 4 shall deliver to the other Party a written notice of termination to that effect (the "*Termination Notice*"), which shall (i) specify in reasonable detail the circumstances giving rise to the Termination Notice, or (ii) state that it is a termination for convenience pursuant to Section 4.3. If no such specification is provided, then the termination shall be deemed to be a termination for convenience. Except to the extent otherwise provided herein, this Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than the date upon which the applicable Party is entitled to effect such termination as provided above.

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

4.5 Administrator Obligations after Termination.

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

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

4.6 Survival. The provisions of Sections 4.(b), 4.4, 4.5, 4.6, 9.1, 9.3, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.15, 9.16 and Article 5 and Article 6 shall survive termination of this Agreement.

ARTICLE 5 INDEMNIFICATIONS

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

ARTICLE 6 LIMITATIONS OF LIABILITY

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

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

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

ARTICLE 7 FORCE MAJEURE EVENTS

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

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

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9 MISCELLANEOUS

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

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

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

9.4 Assignment.

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

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

9.5 [Reserved].

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

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

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

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

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

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

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

¹ Need to discuss ownership of data gathered or developed

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

if to the Administrator:

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

with a copy to:

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

and to:

Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603
Attention: John C. Hitt, Jr.
e-mail: hitt@chpman.com
Facsimile No.: (312) 701-2361

If to the County:

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

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

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

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

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

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

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

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


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

[Signature page follows]

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

COUNTY:

THE COUNTY OF MCHENRY

By:  _____

Name: _____

Its: _____

ADMINISTRATOR:

THE ILLINOIS ENERGY CONSERVATION
AUTHORITY NFP

By: _____

Name: _____

Its: _____

Exhibit A

Defined Terms

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

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

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

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

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

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

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

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

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

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

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

"Disclosing Party" has the meaning given in Section .

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

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

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

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

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

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

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

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

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

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

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

²Names of Program documents subject to change.

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

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

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

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

"Losses" has the meaning given in Section 5.1.

"PACE" means property assessed clean energy.

"Party" means either the County or Administrator.

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

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

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

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

"Program Documents" means the Program Manual, [the Lender Consent Template, the Qualified Lender Agreement and the Financing and Special Charge Agreement, [the relevant bond documents]] in each case as the same may be modified or amended pursuant to the written consent or approval of the County.³

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

³ Names of Program documents subject to change.

⁴ Names of Program documents subject to change.

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

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

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

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

"Receiving Party" has the meaning given in Section .

"Services" has the meaning given in Section 1.5.

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

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

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

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

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

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

"Term" has the meaning given in Section 1.1.

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

⁵Names of Program documents subject to change.

⁶Will be the aggregate of all fees.

⁷To be determined when the Supplemental Services are determined.

Exhibit B

Administration Services

Phase I Services

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

Phase II Services

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

Exhibit C
Supplemental Services

Energy Saving Audit reports

Ingemunson Law Offices Ltd.

759 John St. Unit A
Yorkville, IL 60560
Ph (630) 553-5622
Fx (630) 553-7958
Dallas Ingemunson
Gregg Ingemunson
Boyd Ingemunson

October 29, 2020

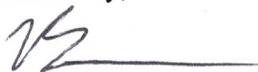
Scott Koepfel
County Administrator
111 W. Fox St., Suite 316
Yorkville, IL 60560

Re: Law Office Corporation

Dear Scott,

I am writing to request an extension of the period for which my loan repayments are abated. The pandemic has resulted in our revenues dropping 60-70%. Our business wasn't equipped or designed to take advantage of outdoor sales as much as many other businesses that sold food. The music industry as a whole is one of the most impacted industries by the pandemic and there is not much of a light at the end of the tunnel right now. It seems that more restrictions will be forthcoming and our revenues will most likely drop even further. It has been a tremendous help in minimizing or losses to have our loan payments abated. I would sincerely request that the county extend this abatement through the winter months. I appreciate your time and attention to this matter.

Sincerely,



Boyd Ingemunson

Kendall County Economic Development Commission
Loan Status
9/30/2020

Account Name	Last Pymt Loan Date	A		B		C	D	E		
		Monthly Payment	Interest Rate	Total Paid				Principal Balance	Bank Totals	
		Principal		Principal	Interest				Interest Earned	Bank Balance Includes I earned
Surplus - EDC BB #815-635								434,670.19	1,700,825.16	
<u>Law Office Corporation</u> Payment: #57	3/2/2020	579.05		459.54	119.51					
Loan Status: Midland State Bank	3/11/2015	450.56								
		120,000.00								
		120,450.56	1.50%	25,298.53	7,707.32	95,152.03		98.56	33,104.41	
<u>Civilian Force Arms</u> Payment: #33	9/30/2020	1,700.00		5,852.64	0.00					
Loan Status: First National Bank	8/6/2015	90,000.00	2.90%	90,000.00	6,791.14	0.00		128.70	96,919.84	
<u>Dearborn Cafe</u> Payment: #60	9/30/2020	1,024.33		981.89	43.84					
Loan Status: FNB #2920	9/1/2015	80,000.00	2.10%	55,931.99	5,563.83	24,068.01		181.71	61,677.53	
<u>Lucky's Beer N Dons</u> Payment: #23	9/29/2020	225.00		155.88	69.12					
Loan Status: BB 286	5/23/2017	32,086.20	2.90%	3,639.13	1,760.87	28,447.07			7,516.96	
Total Loan Statuses		322,536.76		174,869.65	21,823.16	147,667.11		435,079.16	1,900,043.90	

Total Assets (D+E)

2,047,711.01