**County Participation Agreement**

**THIS DELAWARE C-PACE COUNTY PARTICIPATION AGREEMENT** (the “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2019, by and between the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a body corporate and politic of the State of Delaware (the “**County**”), and the **DELAWARE SUSTAINABLE ENERGY UTILITY (DESEU)**, a non-profit organization created by the state of Delaware responsible for the program administration of the Delaware Voluntary Clean Energy Financing Program (the “Commercial Property Assessed Clean Energy Program” or “C-PACE Program”) established under the 2018 Delaware Energy Act (the “**Statute**”) (each a “Party” and collectively the “Parties”).

**RECITALS**

**WHEREAS**, Senate Bill No. 113, Section 1, Amend §8061, Title 29 of the Delaware Code relating to the Delaware Voluntary Clean Energy Financing Program Based on Property Assessments or Other Local Assessments established commercial property assessed clean energy financing in the State of Delaware; and

**WHEREAS**, C-PACE is a program to facilitate financing for eligible clean energy improvements to commercial, industrial, agricultural, and multifamily properties (with five or more units) by using a voluntary benefit assessment to provide security for repayment of the financing. DESEU may delegate its powers under this chapter to a third party to assist in administration of the C-PACE Program; and

**WHEREAS**, Section 1, Amend §8061, Title 29 of the Delaware Code directs DESEU to establish and administer the C-PACE Program but stipulates that the C-PACE Program may only operate if the County has adopted a resolution authorizing DESEU to conduct projects in their jurisdiction, and

**WHEREAS**, Section 1, Amend §8061, Title 29 of the Delaware Code requires the County to enter into a written agreement, approved by its legislative body, with the C-PACE Program pursuant to which the County has agreed to levy benefit assessments for qualifying energy improvements for benefitted commercial property owners within the County.

**WHEREAS**, the County has adopted a resolution in the form attached hereto as Exhibit A, authorizing DESEU to conduct the C-PACE Program within the County and authorizing the County to enter into this Agreement with DESEU;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Statute, it is hereby agreed as follows:

**Section 1. Definitions**

(a) **“Benefit Assessment**” means a voluntary property assessment or other government service fee assessment, which is the mechanism through which a commercial property owner repays the financing for qualifying energy improvements.

(b) “**Commercial Property**” means any real property other than a residential dwelling containing less than five dwelling units.

(c) **“Qualifying Energy** **Improvements**” means any construction, renovation or retrofitting of energy efficient technology, clean energy systems, or qualifying waste heat recovery technologies that are permanently fixed to qualifying commercial real property.

(d) **“Qualifying Commercial Real Property**” means any commercial property located in the State of Delaware, regardless of ownership, that meet the qualifications established for the C-PACE Program.

(e) “**Program Guide**” means the rules and regulations promulgated by DESEU to implement the C-PACE Program pursuant to the Statute, as the same may be amended or supplemented from time to time.

**Section 2. Obligations of DESEU.**

1. Program Requirements.

Pursuant to the Statute, DESEU:

(1) shall develop a Program Guide that governs DESEU’s administration of the C-PACE Program that provides recommended best practices to C-PACE stakeholders. DESEU may serve as a facilitator for the purpose of securing state or private third-party financing for Qualifying Energy Improvements pursuant to the Statute; and

(2) shall receive and review applications submitted by property owners within the County for financing of Qualifying Energy Improvements, and approve or disapprove such applications in accordance with the Statute.

(b) Project Requirements.

If a property owner requests financing through the C-PACE Program for improvements under the Statute, DESEU shall review the project application against the requirements in Statute.

(c) Assessment and Financing Agreement for Project.

The party providing the financing (the “**Capital Provider**”) may enter into an Assessment and Financing Agreement with the owner of the Qualifying Commercial Real Property (the “**Assessment & Financing Agreement**”). The Assessment & Financing Agreement shall clearly state the amount of the voluntary Benefit Assessment to be levied against the Qualifying Commercial Real Property. DESEU and the Capital Provider shall disclose to the property owner the costs and risks associated with participating in the C-PACE Program, including risks related to the failure of the property owner to pay the voluntary Benefit Assessment provided for in the Assessment & Financing Agreement. The Capital Provider shall disclose to the property owner the effective interest rate on the voluntary Benefit Assessment, including other fees and charges imposed by DESEU to administer the C-PACE Program as well as any fees charged by the Capital Provider or the County. The property owner must be informed that each Qualifying Energy Improvement, regardless of its useful life, may be bundled with other such improvements on the Qualifying Commercial Real Property for purposes of assessment and paid for over the assessment term.

(d) Establish Voluntary Benefit Assessments and Assessment Units.

With respect to each voluntary Benefit Assessment placed on a Qualifying Commercial Real Property, DESEU shall determine from the Capital Provider and property owner the amount of the voluntary Benefit Assessment. DESEU shall approve the specifics of the applicable voluntary Benefit Assessment including, without limitation, the amount of the voluntary Benefit Assessment, term, interest rate and repayment dates in accordance with the Statute. In no event shall the amount of any voluntary Benefit Assessment exceed the value of: (a) the voluntary Benefit Assessment benefit provided to the Qualifying Commercial Real Property, or (b) the Qualifying Commercial Real Property. Costs incurred for any property not approved to participate shall not be included in a certified assessment roll.

(e) Filing Assessment with County Clerk & Recorder.

Upon the execution of an Assessment & Financing Agreement, DESEU will be responsible, in collaboration with the County, to (i) file and record such Benefit Assessment lien in the public land records of the County, (ii) assign such lien to the Capital Provider, and (iii) amend such liens from time to time.

**Section 3. Obligations of the County**.

(a) Promotion of Program; Assistance for C-PACE Financing.

The County may use good faith efforts to assist DESEU in marketing efforts and outreach to the local business community to encourage participation in the C-PACE Program, such as including C-PACE Program information on the County’s website.

(b) Billing and Collection of Benefit Assessments.

The County shall bill the Benefit Assessments in the same manner and at the same time as it bills its annual real property taxes. The Benefit Assessments shall be a separate clearly defined line item and shall be due on the same date as the County’s annual real property taxes.

Billed Benefit Assessment amounts shall be collected in the same manner and at the same time as the annual property taxes of the County on real property, including, in the event of default or delinquency, with respect to any penalties, fees and remedies, and lien priorities, provided that in any event a foreclosure sale brought with respect to a Benefit Assessment shall not have the effect of extinguishing any subordinate mortgage liens against the Qualifying Commercial Real Property.

The County shall remit to DESEU all amounts collected with respect to the Benefit Assessments by the thirtieth (30th) of the month following the month in which the Benefit Assessment was collected, less any County collection fees. DESEU will remit the Benefit Assessment collections to the appropriate Capital Providers. The County will provide periodic collection reports to DESEU as agreed to by the Parties.

DESEU will provide the County a list of Benefit Assessments, including the property owner’s name, address, parcel number, and the amount to be billed, by June 15th preceding the tax billing year. The County will bill based on the list provided by DESEU.

DESEU will reimburse the County for any reasonable, one-time expenses that are incurred by the County to participate in the C-PACE Program. An example of such expenses may include the modification to the County’s property tax billing and collections software to enable processing of C-PACE assessment billing and collections.

(c) Fees for Billing and Collection of Benefit Assessments.

The County shall receive a one-time servicing fee, as defined in the fee schedule attached hereto as Exhibit B, for each Qualifying Commercial Real Property that the County maintains responsibility for Benefit Assessment billing and collections.

**Section 4. Term and Termination**.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the voluntary Benefit Assessments have been paid in full or deemed no longer outstanding.

**Section 6. Default**.

Each Party shall give the other Party written notice of any breach of any covenant or term of this Agreement and shall allow the defaulting Party thirty (30) calendar days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the thirty (30) days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other Party of the actual cure of any such default. The Parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance.

**Section 7. Miscellaneous Provisions**.

(a) Amendment and Termination.

After a Capital Provider provides funds to finance the costs of any C-PACE project, this Agreement may not be amended or terminated by the Parties without the prior notification of the holders of the assignable lien.

(b) Severability.

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(c) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(d) Notices.

All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

If to the County:

\_\_\_\_\_\_\_\_\_\_\_\_ County

c/o Board of County Commissioners
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

With a Copy to:

County Attorney
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If to DESEU:

C-PACE Program Administrator
c/o Delaware Sustainable Energy Utility, Inc

500 West Loockerman Street, Suite 400.

Dover, DE 19904

Attention: Anthony (Tony) DePrima, Ph.D.

Executive Director

Phone: (302) 883-3048

Email: tony.deprima@deseu.org

With a Copy to:
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(e) Amendment.

Except as otherwise set forth in this Agreement, any amendment to any provision of this Agreement must be in writing and mutually agreed to by DESEU and the County.

(f) Applicable Law and Venue.

This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Delaware. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the district courts of the County, the State of Delaware.

(g) Entire Agreement.

This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement. In the event of any conflict between the Program Guide and this Agreement, the terms of this Agreement shall control.

(h) Headings.

The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

(i) Changes in Law or Regulation.

This Agreement is subject to such modifications as may be required by change in federal or Delaware state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and made a part of this Agreement on the effective date of such change, as if fully set forth herein. Headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

(j) Third-Party Beneficiaries.

It is specifically agreed among the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any claim under this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

(k) No Waiver of Rights.

A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

(l) No Waiver of Governmental Immunity.

Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the County or to DESEU, their officials, employees, contractors, or agents, or any other person acting on behalf of the County or DESEU.

(m) Independent Entities.

The Parties shall perform all services under this Agreement as independent entities and not as an agent or employee of the other Party. It is mutually agreed and understood that nothing contained in this Agreement is intended, or shall be construed as, in any way establishing the relationship of co-partners or joint ventures between the Parties hereto, or as construing either Party, including its agents and employees, as an agent of the other Party. Each Party shall remain an independent and separate entity. Neither Party shall be supervised by any employee or official of the other Party. Neither Party shall represent that it is an employee or agent of the other Party in any capacity.

**IN WITNESS WHEREOF**, the County and DESEU have each caused this Agreement to be executed and delivered as of the date indicated above:

**COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, President
Board of County Commissioners

Attest:
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Clerk to the Council (Secretary to the Levy Court Board)

**APPROVED AS TO FORM:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

County Attorney

 **DELAWARE SUSTAINABLE ENERGY UTILITY (DESEU)**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Anthony (Tony) DePrima, Ph.D., Executive Director

Exhibit A
County Resolution

**RESOLUTION 2018**

**A Resolution Concerning the Authorization of DESEU to Conduct the Commercial Property Assessed Clean Energy Program (C-PACE Program), within \_\_\_\_\_\_\_\_\_\_\_\_ County (“County”)**

RECITALS

A. Senate Bill No. 113, Section 1, Amend §8061, Title 29 of the Delaware Code relating to the Delaware Voluntary Clean Energy Financing Program Based on Property Assessments or Other Local Assessments established commercial property assessed clean energy financing in the State of Delaware (2018 Delaware Energy Act) (the “**Statute**”) directs the **DELAWARE SUSTAINABLE ENERGY UTILITY (DESEU),** a non-profit organization created by the state of Delaware, directs DESEU to establish and administer the C-PACE Program.

 B. Pursuant to Senate Bill No. 113, Section 1, Amend §8061, Title 29 of the Delaware Code relating to the Delaware Voluntary Clean Energy Financing Program Based on Property Assessments or Other Local Assessments , DESEU may only establish and administer the C-PACE Program in the County if the County authorizes it do so by resolution.

C. The County wishes to authorize DESEU to administer projects through the C-PACE Program in the County.

D. DESEU and the County have agreed on the terms of the C-PACE County Participation Agreement in the form attached hereto (the “Participation Agreement”).

THEREFORE, THE COUNTY RESOLVES:

The Delaware Sustainable Energy Utility shall be authorized to conduct the C-PACE Program in the County in accordance with the Participation Agreement.

The County hereby: (a) adopts the above recitations as findings of the County; (b) authorizes the County Attorney, in consultation with the Chair, to make such changes as may be needed to the Participation Agreement in order to correct any nonmaterial errors or language that do not materially increase the obligations of the County; (c) authorizes the Chair to execute the Participation Agreement following review and approval by the County Attorney; and (d) authorizes the Chair, Vice Chair, or designee to execute any and all other necessary letters, orders, or documents as may be required to facilitate the successful implementation of the C-PACE Program in the County.

ADOPTED on this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2019.

BOARD OF COMMISSIONERS OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Chair

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Vice Chair

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Commissioner

 ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Clerk to the Board

Exhibit B
**Fee Schedule for County Billing and Collection of Benefit Assessments**

The County shall receive a one-time servicing fee, as defined in the following fee schedule, for each Qualifying Commercial Real Property that the County maintains responsibility for Benefit Assessment billing and collections.

|  |  |
| --- | --- |
| **Benefit Assessment Finance Term** (years) | **One-Time County Servicing Fee** ($)\* |
| 1 to 10  | $700 |
| 11 to 15 | $1,000 |
| 16 to 20 | $1,250 |
| 21 to 25 | $1,500 |

\*DESEU, or its designee, shall remit to the County the one-time County servicing fee by the thirtieth (30th) of the month following the month in which the County servicing fee was collected from the Qualifying Commercial Real Property owner.