

ORDINANCE NO. ORD-2022-25

AN ORDINANCE TO ADOPT
THE CLEAN ENERGY LOAN PROGRAM ORDINANCE
WHICH SHALL REPEAL AND REPLACE
ORDINANCE NO. ORD-2022-03, CLEAN ENERGY LOAN PROGRAM,
ADOPTED AND EFFECTIVE MARCH 1, 2022

RECITALS

Maryland Code, Local Government Article, §§ 1-1102 *et seq.* (the *Act*), authorizes counties and municipalities to enact ordinances or resolutions to establish clean energy loan programs in their jurisdictions for the purpose of facilitating loan financing for Qualifying Projects to Commercial Properties (as those capitalized terms are defined in the Act) by utilizing state or local tax assessment mechanisms to provide security for repayment of the said loans.

The Board of County Commissioners of Washington County, Maryland (the *Board*), established such a program by Ordinance No. ORD-2022-03, adopted and effective March 1, 2022, following a public hearing held the same date, which hearing, together with the text of the proposed Ordinance No. ORD-2022-03, was duly noticed and publicly advertised. The clean energy loan program established by Ordinance No. ORD-2022-03 was for the expressed purpose of encouraging the finance or refinance of energy and water efficiency projects, environmental remediation projects, renewable energy projects, and resiliency projects, as were set forth in applicable provisions of the Act.

Certain legislative changes to the Act necessitate the Board's repeal and replacement of said Ordinance No. ORD-2022-03 with the attached Clean Energy Loan Program Ordinance.

A public hearing was held on November 29, 2022, following due notice and advertisement of the repeal and replacement of Ordinance No. ORD-2022-03 with the text of the attached Clean Energy Loan Program Ordinance (the *Ordinance*).

Public comment was received, reviewed, and considered concerning the aforesaid Ordinance.

The Board believes it to be in the best interests of the citizens of Washington County for the Board to repeal Ordinance No. ORD-2022-03 and to adopt the attached Clean Energy Loan Program Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Washington County, Maryland, that Ordinance No. ORD-2022-03, adopted and effective March 1, 2022, is hereby repealed; and

BE IT FURTHER ORDAINED by the Board of County Commissioners of Washington County, Maryland, that the attached Ordinance entitled "Clean Energy Loan Program Ordinance" is hereby adopted; and

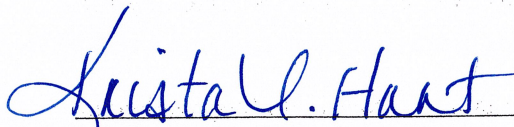
BE IT FURTHER ORDAINED by the Board of County Commissioners of Washington County, Maryland, that the Maryland Clean Energy Center (MCEC) and/or its designee are hereby authorized and directed to serve as the Clean Energy Loan Program Administrator (as that capitalized term is defined in the Act) under the terms of a separate agreement; and

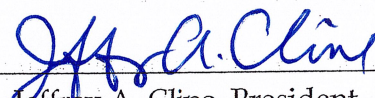
BE IT FURTHER ORDAINED by the Board of County Commissioners of Washington County, Maryland, that the Ordinance shall apply to any Commercial Property for which a Clean Energy Loan (as those capitalized terms are defined in the Act) was financed on or after March 1, 2022.

Adopted and effective this 29th day of November, 2022.

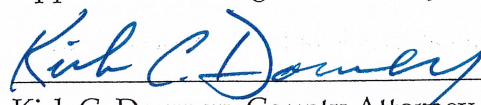
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND


Krista L. Hart, Clerk

BY: 
Jeffrey A. Cline, President

Approved as to legal sufficiency:


Kirk C. Downey, County Attorney

Mail to:
County Attorney's Office
100 W. Washington Street, Suite 1101
Hagerstown, MD 21740-4735

CLEAN ENERGY LOAN PROGRAM ORDINANCE

Section 1. Clean Energy Loan Program.

(a) **Definitions.** In this Ordinance, the following words have the meanings indicated:

- (1) *Act* means §§ 1-1101 *et seq.* of the Local Government Article.
- (2) *Clean Energy Lender* means a capital provider that provides loans to Property Owners to finance Qualifying Projects, approved by MCEC, and such capital provider's successors, transferees, and assignees.
- (3) *Clean Energy Loan* means any loan made by a private lender to a Property Owner under the Clean Energy Loan Program.
- (4) *Clean Energy Loan Financing Agreement* means an agreement between a Property Owner and a Clean Energy Lender providing for the terms and conditions of a Clean Energy Loan.
- (5) *Clean Energy Loan Obligation* means all indebtedness and obligations of a Property Owner to a Clean Energy Lender under a Clean Energy Loan Financing Agreement.
- (6) *Clean Energy Loan Program or PACE Program* means the clean energy loan program authorized by the Act and established by Section 1-(b) of this Ordinance, the purpose of which is to provide loans to Property Owners to finance Qualifying Projects.
- (7) *Clean Energy Loan Program Administrator* means any person or entity selected by the County to manage the Clean Energy Loan Program.
- (8) *Commercial Property* means any real property as defined in the Act, including residential dwellings containing more than four single dwelling units.
- (9) *County* means Washington County, Maryland.
- (10) *Local Government Article* means the Local Government Article of the Annotated Code of Maryland, as it may be amended.
- (11) *Property Owner* means the owner of qualified Commercial Property.
- (12) *Qualifying Projects* means projects as defined in Section 1-(g) of this Ordinance.
- (13) *Surcharge* means the assessment levied by the County on a Property Owner's property tax bill to collect PACE Program loan payments owed to a Clean Energy Lender by the Property Owner and costs of administering the PACE Program in accordance with the Act and as authorized by Section 2 of this Ordinance.

(14) *Surcharge Lien* means the lien automatically established upon the County's levy of the Surcharge on the property tax bill.

(b) **Program.** There is a Clean Energy Loan Program to finance Qualifying Projects as provided in the Act.

(c) **Rules and Regulations.** The County may adopt rules and regulations to administer the Clean Energy Loan Program consistent with this Ordinance.

(d) **Program Administrator.** The County may enter into an agreement with a private entity or State instrumentality to administer the Clean Energy Loan Program.

(e) **Scope.** Property Owners are eligible to participate in the Clean Energy Loan Program for non-accelerating loans greater than \$25,000.

(f) **Eligibility.** In order to be eligible for a Clean Energy Loan, the Property Owner shall:

(1) have a 100% ownership interest in the property located in Washington County for a Qualifying Project(s) is(are) proposed;

(2) demonstrate that the most recent property taxes, assessments, and charges on the property have been paid;

(3) provide a copy of written notice to all current holders of a mortgage or deed of trust who have a priority recorded lien on the property and written proof of express consent to the Clean Energy Loan as a priority lien by all current holders of a mortgage or deed of trust on the property that is to be financed under the Clean Energy Loan Program; and

(4) establish that the owner of the Commercial Property is able to repay the loan provided under the Clean Energy Loan Program, in a manner substantially similar to that required for a mortgage loan under §§ 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article of the Annotated Code of Maryland.

(g) **Qualifying Projects.** The cost of the following types of Qualifying Projects to existing buildings and structures, or new construction, on Commercial Property may be financed through the Clean Energy Loan Program:

(1) Energy and water efficiency projects;

(2) Renewable energy projects, including, but not limited to, solar energy equipment, geothermal energy devices, and wind energy systems;

(3) Environmental remediation projects which means a project intended to remove environmental or health hazards, and including projects that promote indoor air and water quality, asbestos remediation, lead paint removal, and mold remediation;

(4) Resiliency projects which means a project intended to increase the capacity of a property to withstand natural disasters and the effects of climate change, including flood mitigation, stormwater management, a project to increase fire or wind resistance, a project to increase the capacity of a natural system, an inundation adaptation project, alternative vehicle charging infrastructure, and energy storage; and

(5) Any other project approved by the County or the Clean Energy Loan Program Administrator as qualifying consistent with the Act.

(h) **Qualifying Costs.** A Clean Energy Loan may be used to pay for all costs incurred by a Property Owner in connection with the Qualifying Projects, including, but not limited to, the cost of the energy audit; feasibility studies and reports; project management, design, installation, and construction of the Qualifying Projects; commissioning; energy savings or performance guaranty or insurance; building accreditation; closing costs of the Clean Energy Loan; permitting fees; administrative fees; post-install Evaluation, Measurement & Verification; and building accreditation.

Section 2. Real property tax surcharge.

(a) **Repayment of Loans.** A Property Owner participating in the Clean Energy Loan Program shall repay the Clean Energy Loan through a Surcharge on the real property tax bill. Upon receipt of written notice from the Clean Energy Loan Program Administrator of the execution of a Clean Energy Loan Financing Agreement, the County shall add the Surcharge to the tax property bill on July 1 of the year indicated by the payment schedule of the Clean Energy Loan Financing Agreement. The Surcharge shall constitute a first lien on the property from the date it becomes payable until the unpaid Surcharge and interest and penalties on the Surcharge are paid in full, regardless of a change in ownership, whether voluntary or involuntary. A person or entity that acquires property subject to a Surcharge assumes the obligation to pay such Surcharge.

(b) **Calculation.** The Surcharge for a Clean Energy Loan shall include the Clean Energy Loan Obligation and any administrative costs incurred by the County which shall be the actual expenses incurred to administer the program.

(c) **Statement of Levy and Lien of Surcharge.** Upon receiving written notice from the Clean Energy Loan Program Administrator of the execution of a Clean Energy Loan Financing Agreement, the Property Owner shall execute an agreement with the County and the Clean Energy Lender that will be recorded in the land records of Washington County, at the expense of the Property Owner, and which shall include:

(1) the date the Clean Energy Loan was made to the Property Owner and the property became subject to the Surcharge;

(2) the term of the Clean Energy Loan over which the Surcharge will apply to the property;

(3) the Clean Energy Loan Obligation and estimated County administrative costs for the first year;

(4) the annual principal and interest amount for each year of the term of the Clean Energy Loan, including any partial-year prorated amounts;

(5) prepayment requirements and any prepayment premium that may apply to a prepayable Clean Energy Loan;

(6) notice that the Clean Energy Loan Obligation and the County's administrative costs will be repaid through a Surcharge included on the Property Owner's real property tax bill due and payable on the same date as the real property tax bill;

(7) notice that an unpaid Surcharge constitutes a first lien on the property that has priority over prior or subsequent liens in favor of private parties and that the Surcharge will continue as a lien on the property from the date it becomes payable until the unpaid Surcharge and interest and penalties on the Surcharge are paid in full, regardless of a change in ownership of the property, whether voluntary or involuntary; and

(8) notice that, if payments of Surcharges are not timely paid, the Surcharge will be collectible as a tax lien through the tax sale process authorized under Tax-Property Article, Title 14, Subtitle 8, of the State Code and in accordance with Section 2-103 of the Code of Public Local Laws for Washington County, and that an overdue Surcharge will be so collected, irrespective of whether real property taxes (or any other taxes, charges, or assessments) are due and owing.

(d) **Default.** In the event of default on the Surcharge, the County shall be required to collect the lien pursuant to Tax-Property Article, Title 14, Subtitle 8, of the State Code and in accordance with Section 2-103 of the Code of Public Local Laws for Washington County, irrespective of whether property taxes (or any other taxes, charges, or assessments) are due and owing. The County shall not incur any liability to the Clean Energy Lender or others in the event of default.

(e) **Credit of Payments.** Payments received from a Property Owner shall be credited first to all County taxes, assessments, and charges.

(f) **Payment to Clean Energy Lender.** The County shall have no ownership of the Surcharges collected except for administrative costs provided under this Ordinance. The County shall pay all Surcharge payments in any calendar month to the applicable Clean Energy Lender or the Clean Energy Loan Program Administrator within 30 days after the end of the month in which such amounts are collected. The County shall have no obligation to make payments to any Clean Energy Lender with respect to any Clean Energy Loan Obligation other than that portion of Surcharge actually collected from a Property Owner for the repayment of a Clean Energy Loan.

Section 3. Financing.

(a) **Private Lenders; Terms.** Clean Energy Loans may be provided by any private lender; and a Clean Energy Financing Agreement may contain any terms agreed to by the Clean Energy Lender and the Property Owner, as permitted by law, for the financing of Clean Energy Loans. The County may not finance or fund any loan under the Clean Energy Loan Program, shall serve only as a program sponsor to facilitate loan repayment by including the Surcharge on the County real property tax bill for the property, and shall incur no liability for the Clean Energy Loan. The Clean Energy Loan must be repaid over a term not to exceed the useful life of the Qualifying Project(s) as determined by the Clean Energy Loan Program.

(b) **County Role.** The County's role in the Clean Energy Loan Program is limited to sponsoring the Clean Energy Loan Program and collecting and forwarding the Surcharges imposed thereunder. The County may not provide Clean Energy Loans or other financing in connection with the Clean Energy Loan Program.

**COMMERCIAL PROPERTY ASSESSED
CLEAN ENERGY ("MDPACE") AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 2022, between the Board of County Commissioners of Washington County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland (the "County"), and the Maryland Clean Energy Center, a body politic and corporate and a public instrumentality of the State of Maryland ("MCEC").

RECITALS

1. A Commercial Property Assessed Clean Energy program is a program to facilitate loan financing for Qualifying Projects to Commercial Properties by utilizing a state or local tax assessment mechanism to provide security for repayment of the loans.

2. Pursuant to §1-1102 of the Act (as defined below), counties and municipalities may enact ordinances or resolutions to establish a clean energy loan program.

3. The County has authorized and established a commercial property assessed clean energy loan program ("the PACE Program") pursuant to Ordinance No. ORD-2022-____ adopted and effective _____, 2022 (the "Ordinance"), attached hereto as Exhibit 1.

4. Section 1-(d) of the Ordinance permits the County to enter into an agreement with a PACE Program Administrator.

5. MCEC agrees to work with the County to implement the PACE Program and to obtain financing therefor.

6. To secure financing for the program, MCEC and the County are authorized to enter into a written agreement pursuant to which the County has agreed to assess, collect, remit, and assign Surcharges (defined below) to MCEC in return for Qualifying Projects for Commercial Property Owners within the County and for costs reasonably incurred by the County in performing those duties.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in order to effectuate the purposes of the Act and the Ordinance, the parties agree as follows:

**ARTICLE I
DEFINITIONS**

(a) *Act* means §§1-1101 *et seq.* of the Maryland Code, Local Government Article.

(b) *Clean Energy Lender* means a capital provider that provides loans to Property Owners to finance Qualifying Projects, approved by MCEC, and such capital provider's successors, transferees, and assignees.

- (c) *Clean Energy Loan* means any loan made by a private lender to a Property Owner under the Clean Energy Loan Program.
- (d) *Clean Energy Loan Financing Agreement* means an agreement between a Property Owner and a Clean Energy Lender providing for the terms and conditions of a Clean Energy Loan.
- (e) *Clean Energy Loan Program or PACE Program or MDPACE Program* means the clean energy loan program authorized by the Act and established by Section 1-(b) of the Ordinance, the purpose of which is to provide loans to Property Owners to finance Qualifying Projects.
- (f) *Clean Energy Loan Program Administrator* means any person or entity selected by the County to manage the Clean Energy Loan Program.
- (g) *Commercial Property* means any real property as defined in §1-1101(d) of the Act, including residential dwellings containing more than four (4) single dwelling units.
- (h) *Local Government Article* means the Local Government Article of the Annotated Code of Maryland, as it may be amended.
- (i) *Property Owner* means the owner of qualified Commercial Property
- (j) *Qualifying Projects* means projects as defined in the Ordinance.
- (k) *Surcharge* means the assessment levied by the County on a Property Owner's property tax bill to collect PACE Program loan payments owed to a Clean Energy Lender by the Property Owner and costs of administering the PACE Program in accordance with the Act and as authorized by the Ordinance.
- (l) *Surcharge Lien* means the lien automatically established upon the County's levy of the Surcharge on the property tax bill.

ARTICLE 2

OBLIGATIONS OF MCEC

Pursuant to this Agreement, MCEC will have the following obligations:

- (a) Program Requirements.
 - 1. Shall develop program guidelines governing the terms and conditions under which a Property Owner may access a PACE Program loan from a Clean Energy Lender, pursuant to the Act and Section 1-(f) of the Ordinance.
 - 2. Shall receive and review applications submitted by Property Owners within the County for financing of Qualifying Projects and approve or disapprove each application in accordance with underwriting procedures and requirements established by MCEC and in accordance with State law.

3. Shall prepare and deliver to the County an annual report which shall contain information related to the PACE Program within the County, including the following:

(i) A list of each Commercial Property for which the Property Owner executed a Clean Energy Loan Financing Agreement during the prior year;

(ii) A list of each Commercial Property where all obligations under the Clean Energy Loan Financing Agreement have been satisfied or paid in full during the prior year, including the satisfaction date and a copy of the notice of satisfaction, if required; and

(iii) For each unpaid Surcharge:

A. The date of the Clean Energy Loan Financing Agreement;

B. The total principal balance and accrued interest outstanding on the Clean Energy Loan; and

C. The annual payment(s) due, which shall include principal and accrued interest (including the amount of accrued interest on the initial payment, if different), and the fees for the costs of administering the PACE Program.

(b) Project Requirements. If a Property Owner requests approval from MCEC for a Qualifying Project, MCEC shall do the following:

1. Require proof that the Property Owner owns one hundred percent (100%) of the interests in the property located in Washington County for which Qualifying Projects are proposed;

2. Require that the Property Owner demonstrate that the proposed project is consistent with the requirements of the Act and Section 1-(f) of the Ordinance and is a Qualifying Project;

3. Impose requirements and criteria to ensure that the proposed Qualifying Project is consistent with the purpose of the PACE Program;

4. Require that the Property Owner, prior to the execution of the Clean Energy Loan Financing Agreement, provide a copy of the written notice to all current holders of a mortgage or deed of trust who have a priority recorded lien on the property and written proof of express consent by all current holders of a mortgage or deed of trust on the Commercial Property to the PACE Program loan, along with an acknowledgement of the priority of the Surcharge Lien;

5. Require that the Clean Energy Lender demonstrate to MCEC that the Property Owner is able to repay the loan under the Clean Energy Lender's underwriting standards which are substantially similar to the criteria set forth in the Act and Section 3 of the Ordinance; and

6. Require the Property Owner to provide proof that all outstanding property taxes, assessments, and charges have been paid.

(c) Financing Agreement for Project.

1. A Clean Energy Lender may provide financing to a Property Owner to finance Qualifying Projects, which loan will be non-accelerating and will survive a change of ownership, whether voluntary or involuntary.

2. Each Clean Energy Loan Financing Agreement shall clearly state the final Surcharge that will be levied against the PACE Program Commercial Property.

3. Each Clean Energy Loan Financing Agreement shall contain a Disclosures and Risks Form executed by the Property Owner.

4. Upon the submission of a Clean Energy Loan Financing Agreement to MCEC by a Clean Energy Lender and Property Owner with an approved Qualifying Project, MCEC shall (i) sign the Statement of Levy and Lien which establishes the legally binding Surcharge, including all fees for the operation of the PACE Program, and (ii) may provide a Notice to the County to Commence Levy and Collection of Surcharges for a Clean Energy Loan Program. If the County has semi-annual billing for real property taxes, the Surcharge shall be payable in two (2) equal payments respectively payable on September 30th and December 31st of each year so that they are due at the same time as the installments of the County's real property taxes. If the County changes its practices concerning the billing of annual real property taxes as to the number of installments and their due dates, MCEC will change its practices to the extent possible to correspond with the County's practices.

(d) Levy of Surcharge. Upon receiving written notice from MCEC that a PACE Program Clean Energy Loan Financing Agreement has been executed, MCEC, MCEC's Agent, or the Clean Energy Lender shall file a Notice of Levy and Lien of Surcharge in the County land records.

ARTICLE 3
OBLIGATIONS OF THE COUNTY

(a) Surcharge Billing, Collection, and Disbursement to MCEC.

1. The County shall select, within thirty (30) days of the date of this Agreement, a PACE Program coordinator within the tax collector's office who will assist in Surcharge assessments and collection as set forth in this Agreement.

2. The County shall bill the Surcharge due by a Property Owner on the first tax bill after the Program Administrator provides written notice to the County's PACE Program coordinator of the PACE Program agreement's repayment schedule. The County shall add a Surcharge to its real property tax bill(s) or stand-alone tax bill and shall send a copy of the tax bill containing the Surcharge to MCEC within thirty (30) days of the County's initial tax bill.

3. The purpose of the Surcharge is to repay the Clean Energy Loan under the PACE Program Clean Energy Loan Financing Agreement and to cover costs to operate the PACE Program. The Surcharge shall be a separate, clearly defined line item or separate bill and shall be due on the same date(s) as the County's real property taxes. The amount of the Surcharge will be recorded on the County's tax rolls in the same manner as any other tax, such that the public will

have access to its existence and payment status. The penalties and interest on delinquent Surcharges shall be charged in the same manner and at the same rate as the County charges for delinquent real property taxes. Once the obligation to assess, levy, collect, and disburse Surcharge payments to MCEC is triggered, the obligation survives termination and/or opting-out of this Agreement by the County.

(i) Surcharges collected by the County shall be segregated from all other funds of the County and deposited into a separate account for the benefit of MCEC and identifying MCEC as the beneficial owner. The County disclaims any ownership interest or other interests in such account or the amount collected.

(ii) The County shall pay all Surcharge amounts collected within any calendar month to MCEC no later than thirty (30) days after the last day of the month that the amounts are collected. The County will provide collection reports to MCEC; and MCEC, at its own expense, shall have the right to audit the records relating to the Surcharges upon reasonable notice at reasonable times. MCEC and the County agree to provide each other with information as they may reasonably request. MCEC and the County agree to provide such information in a computer format satisfactory to each other. Reported information may include data necessary for MCEC to include in its annual report required by this Agreement. Required information shall not include information which is deemed confidential information by law or any proprietary or confidential information from loan applicants or relating to the underwriting of any particular PACE Program Loan. The County shall not disclose any information contained in the books and records of MCEC, except as may be required by any applicable law.

(b) Levy of Surcharge. The Surcharge levied pursuant to this Agreement, State Code, and Section 2-(a) of the Ordinance, and the interest, fees, and any penalties thereon, shall constitute a lien against the Commercial Property on which they are made until they are paid. The Surcharge Lien shall be levied and collected in the same manner as the property taxes of the County on real property, including, in the event of default or delinquency, with respect to any penalties, fees, remedies, and lien priorities, as provided by Sections 2-(a), -(b), and -(d) of the Ordinance, and State law.

(c) Collections. Upon the failure of a Property Owner to pay a Surcharge within the appropriate timeframe, the County shall institute a tax lien collection pursuant to State law. Funds collected from a tax sale of a Commercial Property subject to a Surcharge shall be paid to MCEC or the MCEC Agent, its trustee, successors, assignees, or any other entity or person that MCEC or the MCEC Agent designates in writing to receive payment as set forth in Paragraph (a) above.

(d) Delinquencies. In the event that any Property Owner fails to make a Surcharge payment when due in any property tax billing cycle, the County shall provide written notice to MCEC or the MCEC Agent, its trustee, successors, or assignees, of such delinquency in a timely manner and shall endeavor to do so within thirty (30) days.

(e) Amendment of the Surcharge Amount. Pursuant to the PACE Program Clean Energy Loan Financing Agreement, the final amount of the Surcharge may be adjusted after the levy of the Surcharge Lien. Such an adjustment would likely be the result of a change in the qualifying improvement service contract amount during the construction period, a change in the amount of capitalized interest, or an amendment to the PACE Program Clean Energy Loan Financing Agreement. In the event that the final Surcharge amount needs to be adjusted at the

completion of the Qualifying Project or any other time, MCEC will inform the County of the change and provide the County with an updated payment schedule and new Surcharge amount, after which the County shall amend the Surcharge Lien to reflect the adjustment.

(f) PACE Program Administration Costs.

1. The County may include an administration fee to cover costs that will be collected by the PACE Program and remitted to the County. Reimbursable costs and expenses include reasonable costs, including attorneys' fees, incurred by the County in conjunction with any and all proceedings to collect and enforce the Surcharges and delinquent Surcharges, including foreclosure proceedings.

2. The County will provide written notice to MCEC prior to any sale or assignment of its real property taxes or any institution of a judicial foreclosure or other proceeding against any real property for delinquent real property taxes if such real property is subject to a delinquent Surcharge.

ARTICLE 4
TERM

The term of this Agreement shall commence upon the date the last party executes this Agreement. This Agreement shall remain in full force and effect until all of the Surcharges levied by the County have been paid in full or deemed no longer outstanding. Either party may terminate this Agreement at any time upon ninety (90) days' advance written notice to the other party, provided that the County's obligations to collect Surcharges for any PACE Program Loan made prior to the termination date shall continue until all Surcharges (including the interest, penalties, and fees thereon) have been collected and all such PACE Program Loans have been paid in full.

ARTICLE 5
DEFAULT

Each party shall give the other party written notice of any breach of any covenant, provision, or term under this Agreement and shall allow the defaulting party thirty (30) 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 attempt to cure, 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 equitable rights and remedies provided by law, including, but not limited to, specific performance.

ARTICLE 6
MISCELLANEOUS PROVISIONS

(a) Assignment or Transfer by County. The County may not assign or transfer its rights or obligations under this Agreement without prior written consent of MCEC.

(b) MCEC Agent. The County acknowledges and agrees that MCEC may employ a third party to undertake MCEC's obligations under this Agreement, subject to approval by the County (an "MCEC Agent"). In the event that MCEC employs an MCEC Agent, MCEC will notify the County in writing of the name and contact information of the MCEC Agent. The County agrees

that, for purposes of this Agreement, the MCEC Agent shall speak and act for MCEC and that any notices required under the terms of this Agreement required to be sent to MCEC shall also be sent to the MCEC Agent. In the event that MCEC is to be dissolved, MCEC may assign and transfer its rights under this Agreement to the MCEC Agent, subject to the County's right to terminate this Agreement under Article 4.

(c) This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their successors and permitted assigns.

(d) Amendment/Termination/Waiver. This Agreement may not be amended or terminated by either party without the prior written approval of the other party. Any waiver of any provision of this Agreement must be in writing and mutually agreed to by MCEC and the County. Except for the specific provision of this Agreement, which is amended, this Agreement remains in full force and effect after such amendment and is subject to the same laws, obligations, conditions, provisions, rules, and regulations as it was before the amendment.

(e) 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 any of 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.

(f) 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.

(g) Notices. All notices, requests, consents, and other communications shall be in writing and shall be delivered, mailed by first-class mail with postage prepaid, hand-delivered, or overnight delivery service, to the parties, as follows:

If to the County:

Board of County Commissioners of Washington County, Maryland
100 West Washington Street, Suite 1101
Hagerstown, MD 21740
Attention: County Administrator

With courtesy copy to the County Attorney at the same address.

If to MCEC:

Maryland Clean Energy Center
5000 College Avenue, Suite 31010
College Park, MD 20740
Attention: Executive Director

(h) Applicable Law and Venue. This Agreement shall be construed, interpreted, and enforced according to the laws of the State of Maryland. Any claim brought in connection with this Agreement must be brought in the State Courts of Maryland, and the parties consent to the jurisdiction of the State Courts of Maryland.

(i) 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.

(j) Entire Agreement. This Agreement 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.

(k) No Agency. Nothing in this Agreement, and no act of the County or MCEC, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the County and MCEC.

[Remainder of this page intentionally blank]

IN WITNESS WHEREOF, the County and MCEC have each caused this Agreement to be executed and delivered as of the date set forth above:

ATTEST:

**BOARD OF COUNTY
COMMISSIONERS OF WASHINGTON
COUNTY, MARYLAND**

Name: Krista L. Hart, County Clerk

By: _____
Name: Jeffrey A. Cline
Title: President

ATTEST:

**MARYLAND CLEAN ENERGY
CENTER**

Name: _____

By: _____
Name: _____
Title: _____

EXHIBIT 1